

ORAL ARGUMENT NOT YET SCHEDULED

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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NATIONAL WASTE &)	
RECYCLING ASSOCIATION,)	
)	
<i>Petitioners,</i>)	
)	
v.)	No. 24-1216
)	
U.S. ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
<i>Respondents.</i>)	
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**MOTION OF ENVIRONMENTAL DEFENSE FUND TO INTERVENE IN
SUPPORT OF RESPONDENTS**

Pursuant to Federal Rule of Appellate Procedure 15(d) and D.C. Circuit Rule 15(b), Environmental Defense Fund (“EDF”) hereby moves to intervene in support of Respondents U.S. Environmental Protection Agency (“EPA”) and Michael S. Regan in the above-captioned challenge to *Revisions and Confidentiality Determinations for Data Elements Under the Greenhouse Gas Reporting Rule*, 89 Fed. Reg. 31802 (April 25, 2024) (“Reporting Rule”). Counsel for the parties have been contacted for their position on this motion. Counsel for Respondents took no

position on this motion and counsel for Petitioners took no position on this motion but reserved their right to respond after reviewing this filing.

INTRODUCTION

The Reporting Rule updates EPA's Greenhouse Gas Reporting Program, codified at 40 C.F.R. part 98, to improve the quality and accuracy of greenhouse gas emissions data reported from a variety of high-emitting sectors. Specifically, the Reporting Rule updates and revises global warming potentials; adds new reporting sectors; and improves greenhouse gas emission reporting requirements. Data gathered under the Reporting Rule is used to help inform a number of EPA actions under the Clean Air Act. The data is also made publicly available and used by a wide variety of stakeholders for scientific analysis, advocacy efforts, education, policy development, business operations, and other purposes.

EDF seeks to intervene in this proceeding to protect its substantial interests that may be impaired by the disposition of this case. EDF is an environmental organization that advocates for protective governmental actions to reduce climate pollution, including by engaging in policy development, raising public awareness, and supporting scientific and economic advances. These activities require an accurate understanding of the sources and scope of U.S. greenhouse gas emissions—information the Reporting Rule helps to provide. For over a decade, EDF has participated in administrative proceedings and taken legal action to help

ensure the Reporting Rule is accurate and comprehensive. EDF currently uses Reporting Rule data, has done so in the past, plans to continue doing so, and has a strong interest in using and disseminating the more accurate data that the Reporting Rule's revised methodologies will deliver. Further, EDF's members live, work, and recreate near the facilities subject to the Reporting Rule and have an interest in ensuring those facilities accurately disclose their pollution. EDF's members have experienced the impacts of climate change caused by greenhouse gases emitted from facilities subject to the Reporting Rule. No other party, including EPA, adequately represents EDF and its members' interests, and accordingly, the Court should grant this timely motion for intervention.

BACKGROUND

I. Accurate reporting and disclosure of greenhouse gas emissions is important to help support efforts to address climate change.

Data gathered by EPA under the Reporting Rule provides important support for U.S. climate policy, including EPA actions under the Clean Air Act. Accurate information collected under the Reporting Rule is used to shape emission standards, track pollution reductions or increases, and inform other policies to reduce climate pollution. Federal, state, and local policymakers, non-governmental organizations, private companies, and members of the public all use greenhouse gas emission data gathered under the Reporting Rule for various purposes. For instance, organizations like EDF use data gathered under the Reporting Rule in scientific studies, stakeholder advocacy efforts, educational reports, and various other materials. Similarly, stakeholders can use EPA's greenhouse gas data to find high-emitting facilities in their area, compare emissions between similar facilities, and develop common-sense policies. Companies and others can also use the data for various purposes, including tracking and comparing their facilities' greenhouse gas emissions, identifying opportunities to cut pollution, minimizing wasted energy, and identifying cost saving measures. The accuracy of the Reporting Rule's methodologies thus helps to support these and other important uses.

II. EDF has long advocated for accurate reporting of greenhouse gases, including through administrative and court proceedings.

EDF has a strong organizational interest in understanding and abating climate pollution, grounded also in EDF's members' interests in understanding and reducing this harmful pollution. Robertson Decl. ¶¶ 12-14; Iacono Decl. ¶¶ 16-17. As part of this work, EDF has engaged in legal actions to ensure the Reporting Rule covers important sectors. For instance, in 2010, after EPA failed to include the oil and gas sector in the Reporting Rule, EDF filed a lawsuit alleging that this failure violated Congress's directive for EPA to include "all sectors of the economy."¹ This effort culminated in EPA re-proposing and finalizing reporting requirements for the oil and gas sector.² EDF has also participated in numerous administrative proceedings, providing scientific data and recommendations for improving the accuracy of reporting methodologies.³ This includes EDF's participation in the proceedings that have resulted in the challenged regulation,

¹ Fiscal Year 2008 Consolidated Appropriations Act, Pub. L. No. 110-161, 121 Stat. 1844, 2128 (Dec. 26, 2007) & Appropriations Act of 2009, Pub. L. No. 111-8, 123 Stat. 524, 729 (March 11, 2009).

² See 75 Fed. Reg. 18608 (Apr. 12, 2010); 75 Fed. Reg. 74458 (Nov. 30, 2010).

³ See Comments of Environmental Defense Fund on Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas Systems: Revisions to Best Available Monitoring Method Provision, 76 Fed. Reg. 37300 (June 27, 2011), EPA Docket No. EPA-HQ-OAR-2011-0417-0013; Comments on Proposed 2013 Revisions to the Greenhouse Gas Reporting Rule and Proposed Confidentiality Determinations for New or Substantially Revised Data Elements, 78 Fed. Reg. 19802 (April 2, 2013), EPA Docket No. EPA-HQ-OAR-2012-0934-0100.

where we filed comments and provided data on EPA's proposed updates, including those related to municipal solid waste landfills.⁴

Through these and other efforts, EDF has developed extensive expertise on how methane and other greenhouse gases affect the climate and public health, and how to monitor and mitigate emissions. For example, EDF scientists have published numerous scientific papers on methane emissions,⁵ and on March 4, 2024, EDF launched MethaneSAT,⁶ a new satellite that will identify and measure anthropogenic methane emissions worldwide, including from landfills.⁷ EDF has a strong interest in obtaining accurate greenhouse gas emissions data from U.S. landfills to use in ongoing and future advocacy efforts central to its organizational mission. For instance, EDF is currently developing an online mapping tool that

⁴ See EDF, Comment on EPA's proposed Revisions and Confidentiality Determinations for Data Elements Under the Greenhouse Gas Reporting Rule, 87 Fed. Reg. 36920 (Oct 8, 2022), EPA Docket No. EPA-HQ-OAR-2019-0424-0241; EDF, Comment on EPA's supplemental proposed Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule: Subpart HH, 88 Fed. Reg. 32852 (July 20, 2023), EPA Docket No. EPA-HQ-OAR-2019-0424-0330.

⁵ See Environmental Defense Fund, Methane Research Bibliography (cited version last updated October 2023), available at: <https://library.edf.org/AssetLink/5u438u4d822d25r2h78nku0e72h6x86f.pdf>.

⁶ Environmental Defense Fund, MethaneSAT Now in Orbit after SpaceX Launches Groundbreaking Mission to Protect the Climate (March 4, 2024), <https://www.edf.org/media/methanesat-now-orbit-after-spacex-launches-groundbreaking-mission-protect-climate>.

⁷ See Environmental Defense Fund, MethaneSAT, <https://www.methanesat.org/>.

visualizes U.S. landfill emissions and is based on data gathered under the Reporting Rule, as well as other sources. EDF intends to use the tool in advocacy efforts and to educate its members and the general public on the scale and scope of methane pollution caused by landfills.

ARGUMENT

EDF should be permitted to intervene in these proceedings in order to protect its organizational interests and the specific interests of its members in maintaining comprehensive, public, and rigorous greenhouse gas reporting data from all significant facilities, including landfills. As demonstrated below, EDF meets the requirements for intervention.

I. EDF satisfies the requirements for intervention.

Under Federal Rule of Appellate Procedure 15(d), a motion to intervene need only “be filed within 30 days after the petition for review” and provide “a concise statement of the interest of the moving party and the grounds for intervention.” Fed. R. App. P. 15(d); *see also Ala. Mun. Distribs. Grp. v. FERC*, 300 F.3d 877, 879 (D.C. Cir. 2002) (per curiam).

In determining what constitutes appropriate grounds for intervention, this Circuit has sometimes looked to the standard for intervention in the district courts. *See, e.g., Bldg. & Constr. Trades Dep’t, AFL-CIO. v. Reich*, 40 F.3d 1275, 1282-83 (D.C. Cir. 1994) (noting that “the policies underlying intervention [in district

court] may be applicable in appellate courts”) (alteration in original) (quoting *Int’l Union v. Scofield*, 382 U.S. 205, 216-17 n.10 (1965)); *Mass. Sch. of L. at Andover, Inc. v. United States*, 118 F.3d 776, 779 (D.C. Cir. 1997). Under Federal Rule of Civil Procedure 24(a)(2), a movant is entitled to intervention as-of-right whenever (1) its motion is “timely;” (2) the movant claims an “interest relating to the . . . subject of the action;” (3) disposition of the action “may as a practical matter impair or impede the movant’s ability to protect its interest;” and (4) the existing parties may not “adequately represent” the movant’s interest. Fed. R. Civ. P. 24(a)(2); *see also Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003).

EDF readily satisfies these standards. This motion is timely filed within 30 days of the filing of the petition for review. As outlined below, EDF has a strong interest in protecting the Reporting Rule that is relevant to the organization’s purposes; would be harmed if the Reporting Rule is nullified, weakened, or delayed by an adverse disposition in this case; and is not adequately represented by existing parties.

A. EDF has significant interests in the Reporting Rule and the data and transparency it provides.

EDF’s mission is to protect public health and the environment, including by addressing climate change, which requires EDF to understand, use, and

disseminate accurate information on greenhouse gas emissions. In addition, EDF’s members experience climate and health harms that result from greenhouse gas emissions released and reported by facilities subject to the Reporting Rule. EDF therefore has an “interest relating to the . . . subject of the action.” *See* Fed. R. Civ. P. 24(a)(2); Fed. R. App. P. 15(d).

EDF regularly uses and analyzes data gathered under the Reporting Rule and has an interest in obtaining the most accurate greenhouse gas data possible. Robertson Decl. ¶¶ 7, 14.⁸ EDF develops reports, scientific studies, and other materials based on data collected under the Reporting Rule and uses those materials to further its organizational objectives through policy advocacy, membership outreach, and public communications. *Id.* ¶¶ 2, 7. For example, EDF has published scientific studies demonstrating that measured methane emissions are significantly higher than those reported to EPA under the Reporting Rule. *Id.* ¶¶ 8-9. EDF uses those studies to advocate for improvements to the Reporting Rule

⁸ *See, e.g.*, EDF, *Joint CATF-EDF principles on methane reporting for 45V* (2024), <https://blogs.edf.org/energyexchange/2024/07/01/joint-catf-edf-principles-on-methane-reporting-for-45v/>; EIP et al., *Petition for Rulemaking to Revise the New Source Performance Standards and Emission Guidelines for Municipal Solid Waste Landfills* (2023), <https://environmentalintegrity.org/wp-content/uploads/2023/06/FINAL-Petition-for-Rulemaking-CAA-111-Landfills.pdf>; EDF, *Recapturing U.S. Leadership on Climate* (March 2021), <https://www.edf.org/sites/default/files/documents/Recapturing%20U.S.%20Leadership%20on%20Climate.pdf>.

as well as to raise awareness of the magnitude of methane emissions and their contribution to climate change and build support for actions to limit that pollution.

Id. ¶¶ 13-14.

EDF is currently developing an analysis of U.S. landfill methane emissions and a separate mapping tool, both of which rely on data gathered under the Reporting Rule. *Id.* ¶ 13. These projects are central to EDF's organizational efforts to advocate for protective pollution standards and to educate our members on the sources and scope of U.S. greenhouse gas emissions. Moreover, for both, EDF intends to incorporate and use more accurate data that will be gathered through the Reporting Rule's updated reporting methodologies. *Id.*

EDF's members also have an interest in the Reporting Rule because it provides information on the sources and quantities of pollution, including from nearby covered facilities. Iacono Decl. ¶¶ 4-5, 9-10. By providing EDF members and the public with more accurate data on pollution from facilities that impact them, the Reporting Rule provides transparency and allows EDF members to advocate for pollution limitations more effectively. *See id.* ¶¶ 7-8. To help support these interests, members directly access data on EPA's website and also learn from materials developed and disseminated by EDF based on Reporting Rule data. *Id.* ¶¶ 7, 17. EDF members likewise have a strong interest in accurate and transparent

information on climate pollution in the U.S., which is necessary for understanding progress toward climate targets and supporting policy actions.

These interests are sufficient to support intervention under Federal Rule of Civil Procedure 24(a)(2). *See Crossroads Grassroots Pol’y Strategies v. FEC*, 788 F.3d 312, 317-18 (D.C. Cir. 2015) (finding a protectable interest supporting intervention where a party would benefit from agency action). Indeed, this Court has previously granted EDF leave to intervene in prior litigation regarding the Reporting Rule.⁹

B. EDF’s interests would be threatened by a ruling that delays or weakens the Reporting Rule.

An order delaying, weakening, or undoing the Reporting Rule would harm EDF’s organizational interests and EDF’s members’ interests. Without the Reporting Rule’s updated requirements for facilities to disclose their emissions, EDF and its members will continue to be deprived of comprehensive and accurate pollution data. Moreover, because this litigation concerns questions of law under the Clean Air Act, an adverse judgment may impair EDF’s ability to fully pursue its claims in future litigation. *See Peters v. Dist. of Columbia*, 873 F. Supp. 2d 158, 218 (D.D.C. 2012) (citing *Shea v. Angulo*, 19 F.3d 343, 347 (7th Cir. 1994)

⁹ *See* Order, *American Gas Ass’n v. EPA*, No. 11-1020 (and consolidated cases) (D.C. Cir. April 8, 2011).

(“Impairment exists when the decision of a legal question . . . would, as a practical matter, foreclose the rights of the proposed intervenor in a subsequent proceeding.”)). Thus, the disposition of this case “may as a practical matter impair or impede” EDF’s ability to protect its substantial interests in securing accurate and publicly available greenhouse gas pollution information. *See* Fed. R. Civ. P. 24(a)(2).

C. Movants’ interests may not be adequately represented by EPA.

Finally, EDF’s interests in this case are distinct from EPA’s and therefore EPA may not “adequately represent” them. *See* Fed. R. Civ. P. 24(a)(2). EDF’s burden to show that EPA’s representation of their interest may be inadequate is “minimal.” *Berger v. N.C. State Conf. of the NAACP*, 142 S. Ct. 2191, 2203-04 (2022). EDF need not “predict now the specific instances,” *Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977), in which conflicts may arise; a “potential conflict,” *Dimond v. Dist. of Columbia*, 792 F.2d 179, 193 (D.C. Cir. 1986), or a “possibility of disparate interests,” *Costle*, 561 F.2d at 912, is sufficient. Notably, this Court “look[s] skeptically on government entities serving as adequate advocates for private parties,” *Crossroads*, 788 F.3d at 321, and, in evaluating motions to intervene, this Court “ha[s] often concluded that

governmental entities do not adequately represent the interests of aspiring intervenors,” *Fund for Animals*, 322 F.3d at 736.

EDF readily satisfies this standard. *See Crossroads*, 788 F.3d at 321. While EPA must balance multiple interests and perspectives, EDF’s interest is in complete disclosure of the most accurate information available for use in advancing the organizations’ goals and informing its members about sources of pollution. Indeed, in administrative proceedings for the Reporting Rule, EDF advocated for more measurement based reporting methods, including through the use of satellite and aerial data, that were ultimately rejected by EPA.¹⁰ Further, as noted above, EPA has previously declined to include certain sectors under the Reporting Rule, which led to EDF filing lawsuits to compel EPA action. Based on these past and present differences, EDF has sufficiently distinct interests to support intervention. *See Crossroads*, 788 F.3d at 321 (finding that because the agency held different interests from the applicant and disagreed on aspects of the administrative record, it did not adequately represent applicant’s interests).

¹⁰ *See* EDF, Comment on EPA’s proposed Revisions and Confidentiality Determinations for Data Elements Under the Greenhouse Gas Reporting Rule (Oct 8, 2022), EPA Docket No. EPA-HQ-OAR-2019-0424-0241; EDF, Comment on EPA’s supplemental proposed Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule: Subpart HH (July 20, 2023), EPA Docket No. EPA-HQ-OAR-2019-0424-0330.

Further, EDF will “serve as a vigorous and helpful supplement to EPA’s defense.” *Costle*, 561 F.2d at 912-13. As discussed above, EDF has extensively studied the greenhouse gas emissions from various sources and sectors, and methane in particular, from facilities covered by the Reporting Rule. EDF has further advocated for the Reporting Rule for over a decade.¹¹ As a result, EDF’s “experience and expertise . . . can reasonably be expected to contribute to the informed resolution[.]” of this litigation. *Costle*, 561 F.2d at 913. Consistent with this Circuit’s rules, the proposed intervenors will “focus on points not made or adequately elaborated upon in the [government’s] brief, although relevant to the issues before [the] court.” D.C. Cir. R. 28(d)(2).¹²

¹¹ See Comments of Environmental Defense Fund on Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas Systems: Revisions to Best Available Monitoring Method Provision, 76 Fed. Reg. 37,300 (June 27, 2011), EPA Docket No. EPA-HQ-OAR-2011-0417-0013; Comments on Proposed 2013 Revisions to the Greenhouse Gas Reporting Rule and Proposed Confidentiality Determinations for New or Substantially Revised Data Elements, 78 Fed. Reg. 19802 (April 2, 2013), EPA Docket No. EPA-HQ-OAR-2012-0934-0100.

¹¹ See EDF, Comment on EPA’s proposed Revisions and Confidentiality Determinations for Data Elements Under the Greenhouse Gas Reporting Rule, (Oct 8, 2022), EPA Docket No. EPA-HQ-OAR-2019-0424-0241.

¹² Rule 24 also grants the district courts discretion to allow “permissive” intervention whenever an applicant “has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). EDF would easily meet these requirements if they were applied here. To establish a common claim or defense as a defendant-intervenor in a challenge to agency action, it is sufficient that the “movant[] seek to defend” the agency’s decision. *Sault Ste. Marie Tribe of Chippewa Indians v. Bernhardt*, 331 F.R.D. 5, 14 (D.D.C. 2019). Here, EDF intends to offer defensive arguments, all of which will

II. EDF has standing to defend the Reporting Rule.

Should it be required, EDF has Article III standing.¹³ Under D.C. Circuit caselaw, the “standing inquiry for an intervening-defendant is the same as for a plaintiff: the intervenor must show injury in fact, causation, and redressability.” *Crossroads*, 788 F.3d at 316. A movant-intervenor has standing to defend a challenged regulation when it “benefits from [the] agency action, the action is then challenged in court, and an unfavorable decision would remove the [movant’s] benefit.” *Id.* at 317 (finding this proves injury, causation, and redressability at once). Where, as here, there is a statutory right to information, this Court recognizes “informational standing.” *Nat’l Sec. Archive v. CIA*, 104 F.4th 267, 2024 U.S. App. LEXIS 13871, at *6 (D.C. Cir. 2024) (citing *Elec. Privacy Info. Ctr. v. Presidential Advisory Comm’n on Election Integrity*, 878 F.3d 371, 378 (D.C. Cir. 2017)). To demonstrate a sufficiently concrete and particularized

necessarily share questions of law and fact with the underlying challenge and with EPA’s defense of the Reporting Rule. EPA’s, petitioner’s, and EDF’s arguments will all likely be grounded in the Clean Air Act provisions under which EPA acted and in the administrative record for the Reporting Rule.

¹³ The Supreme Court has called into question whether defendant-intervenors need to establish standing. *See Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1951 (2019) (explaining that “it was not . . . incumbent on [a party] to demonstrate its standing” when it participated “as an intervenor in support of the . . . Defendants,” or “as an appellee” on appeal, “[b]ecause neither role entailed invoking a court’s jurisdiction”). However, as this Court has continued to require that defendant-intervenors establish standing, *see, e.g., Yocha Dehe v. U.S. Dep’t of Interior*, 3 F.4th 427, 430 (D.C. Cir. 2021), EDF explains why it has standing to defend the Reporting Rule.

informational injury, a party “must show that (1) it has been deprived of information that a statute requires the government to disclose to it, and (2) it suffers, by being denied access to that information, the type of harm Congress sought to prevent by requiring disclosure.” *Id.* (internal quotations omitted).

EDF has standing to defend the Reporting Rule. First, emissions information gathered under the Reporting Rule must be made public pursuant to the Clean Air Act. *See* 42 U.S.C. § 7414(c) (“Any records, reports or information obtained . . . shall be available to the public”). That includes the more accurate and greater emissions data that would be gathered under the updates to the Reporting Rule, and which could be impeded and withheld from EDF because of the outcome in this litigation. Second, EDF would suffer from the resulting lack of publicly disclosed and accurate data—a harm Congress sought to prevent by requiring EPA to make all emissions data gathered under section 114 publicly available. *See id.* (specifying that “emission data” cannot be withheld for any reason). EDF would be negatively affected if it is unable to access and use the emissions data gathered under the Reporting Rule. For example, EDF’s organizational objectives would be impeded because EDF would not be able to access and use new information on landfill methane emissions that it intends to incorporate into analyses and a mapping tool and to support advocacy efforts to reduce landfill pollution. Similarly, EDF’s members would be harmed because they would be prevented

from accessing accurate information on sources of greenhouse gas emissions, including from facilities near where they live and recreate.¹⁴

CONCLUSION

For the foregoing reasons, Movants respectfully request leave to intervene in Case No. 24-1216.

¹⁴ EDF's members would likewise have standing to defend the Reporting Rule in their own right and EDF has associational standing to defend the Reporting Rule on their behalf. *See Hearth, Patio & Barbecue Ass'n v. EPA*, 11 F.4th 791, 802 (D.C. Cir. 2021).

Respectfully submitted,

/s/ Edwin LaMair

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure and D.C. Circuit Rule 26.1, Movant states that it is a non-profit environmental and public health organization. Movant does not have any parent corporation or any publicly held corporation that owns 10% or more of its stock.

DATED: July 24, 2024

/s/ Edwin LaMair

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CERTIFICATE OF PARTIES

Pursuant to Circuit Rule 27(a)(4) and 28(a)(1)(A), I certify that the parties to this case are set forth below.

Petitioner: National Waste and Recycling Association.

Respondents: The United States Environmental Protection Agency; Michael S. Regan, Administrator of the United States Environmental Protection Agency.

Intervenors: There are no other intervenors or movant-intervenors at the time of this filing.

Amici Curiae: There are no amici curiae at the time of this filing.

DATED: July 24, 2024

/s/ Edwin LaMair
Edwin LaMair

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

I hereby certify that the foregoing Motion to Intervene contains 3600 words and was composed in Times New Roman font, 14-point. The motion complies with applicable type-volume and typeface requirements.

DATED: July 24, 2024

/s/ Edwin LaMair
Edwin LaMair

CERTIFICATE OF SERVICE

On this 24th day of July, 2024, a true and correct copy of the foregoing Motion to Intervene in Support of Respondents was filed with the electronic case filing (“ECF”) system of the U.S. Court of Appeals for the D.C. Circuit, which will provide electronic notice to counsel of record.

DATED: July 24, 2024

/s/ Edwin LaMair

Edwin LaMair