

**U.S. District Court  
District of Columbia (Washington, DC)  
CIVIL DOCKET FOR CASE #: 1:20-cv-02340-EGS**

STATE OF NEW YORK et al v. DONALD J. TRUMP et al

Assigned to: Judge Emmet G. Sullivan

Cases: 1:20-cv-02262-EGS

1:20-cv-02295-EGS

1:20-cv-02405-EGS

Cause: 05:0706 Judicial Review of Agency Actions

Date Filed: 08/25/2020

Jury Demand: None

Nature of Suit: 890 Other Statutory  
Actions

Jurisdiction: U.S. Government Defendant

**Plaintiff**

**STATE OF NEW YORK**

represented by **Elena Goldstein**  
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**Plaintiff**

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**Plaintiff**

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V.

**Defendant**

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*in his official capacity as the President of  
the United States*

represented by **Joseph Evan Borson**

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**Defendant**

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*in his official capacity as the Postmaster*

represented by **Joseph Evan Borson**

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*General of the United States*

*LEAD ATTORNEY  
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**Kuntal Virendra Cholera**  
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**John Robinson**  
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**Defendant**

**UNITED STATES POSTAL SERVICE**

represented by **Joseph Evan Borson**  
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**Movant**

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**Movant**

**CITY OF COLUMBUS**

**Movant**

**THIRTY LOCAL AND TRIBAL  
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**Amicus**

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**BRADY**

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**TEAM ENOUGH**

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 REPRESENTATIVES**

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Date Filed	#	Page	Docket Text
08/25/2020	<u>1</u>		COMPLAINT against All Defendants ( Filing fee \$ 400 receipt number ADCDC-7504757) filed by STATE OF NEW JERSEY, STATE OF HAWAII, CITY OF NEW YORK, STATE OF NEW YORK, CITY AND COUNTY OF SAN FRANCISCO. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summons, # <u>3</u> Summons, # <u>4</u> Summons)(Colangelo, Matthew) (Entered: 08/25/2020)
08/25/2020	<u>2</u>		NOTICE OF RELATED CASE by All Plaintiffs. Case related to Case No. 20 Civ. 2295. (Colangelo, Matthew) (Entered: 08/25/2020)
08/25/2020	<u>3</u>		NOTICE OF RELATED CASE by All Plaintiffs. Case related to Case No. 20 Civ. 2262. (Colangelo, Matthew) (Entered: 08/25/2020)
08/25/2020			Case Assigned to Judge Emmet G. Sullivan. (zsb) (Entered: 08/25/2020)
08/25/2020	<u>4</u>		SUMMONS (3) Issued Electronically as to DONALD J. TRUMP, LOUIS DEJOY, UNITED STATES POSTAL SERVICE. (Attachment: # <u>1</u> Notice and Consent)(adh, ) (Entered: 08/25/2020)
08/25/2020	<u>5</u>		NOTICE of Appearance by Morenike Fajana on behalf of STATE OF NEW YORK (Fajana, Morenike) (Entered: 08/25/2020)
08/26/2020	<u>6</u>		REQUEST FOR SUMMONS TO ISSUE <i>to the U.S. Attorney General</i> filed by STATE OF NEW YORK.(Fajana, Morenike) (Entered: 08/26/2020)
08/26/2020	<u>7</u>		REQUEST FOR SUMMONS TO ISSUE <i>to the U.S. Attorney's Office</i> filed by STATE OF NEW YORK.(Fajana, Morenike) (Entered: 08/26/2020)
08/26/2020	<u>8</u>		SUMMONS (2) Issued Electronically as to, U.S. Attorney and U.S. Attorney General (zjf) (Entered: 08/26/2020)
08/27/2020	<u>9</u>		STANDING ORDER: The parties are directed to read the attached Standing Order Governing Civil Cases Before Judge Emmet G. Sullivan in its entirety upon receipt. The parties are hereby ORDERED to comply with the directives in the attached Standing Order. Signed by Judge Emmet G. Sullivan on 08/27/20. (Attachment: # <u>1</u> Exhibit 1) (mac) (Entered: 08/27/2020)



08/31/2020	<u>10</u>		NOTICE of Appearance by Tim Sheehan on behalf of STATE OF NEW JERSEY (Sheehan, Tim) (Entered: 08/31/2020)
09/01/2020			MINUTE ORDER. The Court, sua sponte, directs the Plaintiffs to show cause why this action should not be consolidated as related with National Association for the Advancement of Colored People v. U.S. Postal Service, 20–2295; Richardson v. Trump, 20–2262; and Vote Forward v. DeJoy, 20–2405 by no later than September 4, 2020 at 12:00 PM. See Fed. R. Civ. P. 42(a) (permitting the court to consolidate actions "involv[ing] a common question of law or fact"); Local Civ. R. 40.5(a)(3) (defining related civil actions). Signed by Judge Emmet G. Sullivan on 9/1/2020. (lcegs3) (Entered: 09/01/2020)
09/02/2020			Set/Reset Deadlines: Plaintiffs Show Cause due no later than 12:00PM on 9/4/2020. (mac) (Entered: 09/02/2020)
09/02/2020	<u>11</u>		NOTICE of Appearance by Joseph Evan Borson on behalf of All Defendants (Borson, Joseph) (Entered: 09/02/2020)
09/02/2020	<u>12</u>		MOTION for Preliminary Injunction by STATE OF NEW YORK (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Declaration of Morenike Fajana, # <u>3</u> Exhibit Index, # <u>4</u> Exhibit 1, # <u>5</u> Exhibit 2, # <u>6</u> Exhibit 3, # <u>7</u> Exhibit 4, # <u>8</u> Exhibit 5, # <u>9</u> Exhibit 6, # <u>10</u> Exhibit 7, # <u>11</u> Exhibit 8, # <u>12</u> Exhibit 9, # <u>13</u> Exhibit 10, # <u>14</u> Exhibit 11, # <u>15</u> Exhibit 12, # <u>16</u> Exhibit 13, # <u>17</u> Exhibit 14, # <u>18</u> Exhibit 15, # <u>19</u> Exhibit 16, # <u>20</u> Exhibit 17, # <u>21</u> Exhibit 18, # <u>22</u> Exhibit 19, # <u>23</u> Exhibit 20, # <u>24</u> Exhibit 21, # <u>25</u> Exhibit 22, # <u>26</u> Exhibit 23, # <u>27</u> Exhibit 24, # <u>28</u> Exhibit 25, # <u>29</u> Exhibit 26, # <u>30</u> Exhibit 27, # <u>31</u> Exhibit 28, # <u>32</u> Exhibit 29, # <u>33</u> Exhibit 30, # <u>34</u> Exhibit 31, # <u>35</u> Text of Proposed Order, # <u>36</u> Certificate of Service)(Fajana, Morenike) (Entered: 09/02/2020)
09/02/2020	<u>13</u>		NOTICE of Appearance by Estelle Bronstein on behalf of STATE OF NEW JERSEY (Bronstein, Estelle) (Main Document 13 replaced on 9/2/2020) (zjf). (Entered: 09/02/2020)
09/02/2020			MINUTE ORDER. The Court, sua sponte, directs the Defendants to show cause why this action should not be consolidated as related with National Association for the Advancement of Colored People v. U.S. Postal Service, 20–2295; Richardson v. Trump, 20–2262; and Vote Forward v. DeJoy, 20–2405 by no later than September 4, 2020 at 12:00 PM. See Fed. R. Civ. P. 42(a) (permitting the court to consolidate actions "involv[ing] a common question of law or fact"); Local Civ. R. 40.5(a)(3) (defining related civil actions). Signed by Judge Emmet G. Sullivan on 9/2/2020. (lcegs3) (Entered: 09/02/2020)
09/02/2020			MINUTE ORDER. In view of <u>12</u> plaintiffs' motion for preliminary injunction, the parties shall file a joint status report by no later than September 8, 2020 at 12:00 PM NOON with recommendations for further proceedings, including, inter alia, (1) whether plaintiffs' motion for a preliminary injunction should be consolidated with the merits under Federal Rule of Civil Procedure 65; and (2) recommendations for further proceedings including, if necessary, a briefing schedule for plaintiffs' motion for a preliminary injunction. Signed by Judge Emmet G. Sullivan on 9/2/2020. (lcegs3) (Entered: 09/02/2020)
09/02/2020			Set/Reset Deadlines: Defendants Show Cause due no later than 12:00PM on 9/4/2020. (mac) (Entered: 09/02/2020)
09/02/2020			

		Set/Reset Deadlines: Joint Status Report due no later than 12:00PM on 9/8/2020. (mac) (Entered: 09/02/2020)
09/03/2020	<u>14</u>	NOTICE of Appearance by Zoe E Friedland on behalf of COUNTY OF SANTA CLARA (Friedland, Zoe) (Entered: 09/03/2020)
09/04/2020	<u>15</u>	RESPONSE TO ORDER TO SHOW CAUSE by STATE OF NEW JERSEY, STATE OF HAWAII, CITY OF NEW YORK, STATE OF NEW YORK, CITY AND COUNTY OF SAN FRANCISCO re Order., <i>Plaintiffs' response to the Court's September 1, 2020 Order to show cause why this action should not be consolidated with 20-cv-2262, 20-cv-2295, and 20-cv-2405</i> filed by STATE OF NEW JERSEY, STATE OF HAWAII, CITY OF NEW YORK, STATE OF NEW YORK, CITY AND COUNTY OF SAN FRANCISCO. (Colangelo, Matthew) (Entered: 09/04/2020)
09/04/2020	<u>16</u>	NOTICE of Appearance by Kuntal Virendra Cholera on behalf of All Defendants (Cholera, Kuntal) (Main Document 16 replaced on 9/4/2020) (zjf). (Entered: 09/04/2020)
09/04/2020	<u>17</u>	RESPONSE TO ORDER TO SHOW CAUSE by DONALD J. TRUMP, LOUIS DEJOY, UNITED STATES POSTAL SERVICE re Order., filed by DONALD J. TRUMP, LOUIS DEJOY, UNITED STATES POSTAL SERVICE. (Cholera, Kuntal) (Entered: 09/04/2020)
09/04/2020	<u>18</u>	Unopposed MOTION for Leave to File <i>Amicus Brief</i> by COUNTY OF SANTA CLARA (Attachments: # <u>1</u> Exhibit Proposed Amicus Brief, # <u>2</u> Exhibit List of Amici Curiae, # <u>3</u> Text of Proposed Order)(Friedland, Zoe) (Entered: 09/04/2020)
09/05/2020	<u>19</u>	Joint MOTION for Protective Order by DONALD J. TRUMP, LOUIS DEJOY, UNITED STATES POSTAL SERVICE (Attachments: # <u>1</u> Text of Proposed Order)(Borson, Joseph) (Entered: 09/05/2020)
09/05/2020		MINUTE ORDER. It is hereby ORDERED that by September 10, 2020, Plaintiffs shall deliver to Chambers three printed courtesy copies of <u>12</u> Plaintiffs' motion for preliminary injunction. The parties may deliver their courtesy copies via overnight mail or by hand delivery to the Courthouse loading dock located at the corner of 3rd and C Streets, N.W. The courtesy copies must include the headers added by the Case Management/Electronic Case Files (CM/ECF) System and be submitted in binders, three-hole punched, with single-sided pages. All exhibits shall be tabbed and indexed for ease of reference. The parties shall deliver to Chambers three courtesy copies of any future filing, including exhibits, in connection with <u>12</u> motion for preliminary injunction. Signed by Judge Emmet G. Sullivan on 9/5/2020. (lcegs3) (Entered: 09/05/2020)
09/05/2020		MINUTE ORDER. In view of <u>15</u> and <u>17</u> responses to order to show cause, as well as the responses from parties in Richardson v. Trump, 20-2262; National Association for the Advancement of Colored People v. U.S. Postal Service, 20-2295; and Vote Forward v. DeJoy, 20-2405, the Court shall not consolidate the cases as related pursuant to Federal Rule of Civil Procedure 42(a) and Local Civil Rule 40.5(a)(3). It is ORDERED that the parties shall coordinate schedules for discovery purposes to the extent possible. Signed by Judge Emmet G. Sullivan on 9/5/2020. (lcegs3) (Entered: 09/05/2020)
09/05/2020		

		MINUTE ORDER granting <u>18</u> unopposed motion for leave to file amicus brief by COUNTY OF SANTA CLARA. Signed by Judge Emmet G. Sullivan on 9/5/2020. (lcegs3) (Entered: 09/05/2020)
09/05/2020	<u>22</u>	AMICUS BRIEF by COUNTY OF SANTA CLARA. (Attachments: # <u>1</u> Exhibit)(zjf) (Entered: 09/08/2020)
09/08/2020	<u>20</u>	Joint STATUS REPORT by CITY AND COUNTY OF SAN FRANCISCO, CITY OF NEW YORK, STATE OF HAWAII, STATE OF NEW JERSEY, STATE OF NEW YORK. (Fajana, Morenike) (Entered: 09/08/2020)
09/08/2020	<u>21</u>	MOTION for Leave to File <i>Amici Curiae Brief in Support of Plaintiffs</i> by RICHARD BLUMENTHAL, CORY A. BOOKER, SHERROD BROWN, TOM CARPER, MAZIE K. HIRONO, AMY KLOBUCHAR, EDWARD J. MARKEY, Jeffrey A. Merkley, JACK REED, BERNARD SANDERS, JEANNE SHAHEEN, ELIZABETH WARREN, SHELDON WHITEHOUSE, RON WYDEN (Attachments: # <u>1</u> Exhibit Proposed Brief of Members of Congress as Amici Curiae in Support of Plaintiffs, # <u>2</u> Text of Proposed Order)(Gorod, Brianne) (Entered: 09/08/2020)
09/09/2020	<u>23</u>	MOTION for Leave to File <i>Amici Curiae Brief in Support of Plaintiffs' Motion for Preliminary Injunction</i> by BRADY, Team ENOUGH (Attachments: # <u>1</u> Proposed Brief of Amici Curiae Brady and Team ENOUGH in Support of Plaintiffs' Motion for Preliminary Injunction, # <u>2</u> Text of Proposed Order)(Luk, Arthur) (Entered: 09/09/2020)
09/09/2020		MINUTE ORDER. In view of <u>20</u> joint status report, the parties shall adhere to the following briefing schedule on <u>12</u> Plaintiffs' motion for preliminary injunction: (1) Defendants shall file their opposition by September 11, 2020 at 12:00 PM; and (2) Plaintiffs shall file their reply by no later than September 16, 2020. It is FURTHER ORDERED that Plaintiffs shall file any request for expedited discovery proceedings in the form of a motion in accordance with paragraph 3(b) of <u>2</u> the Court's standing order governing civil cases. Signed by Judge Emmet G. Sullivan on 9/9/2020. (lcegs3) (Entered: 09/09/2020)
09/09/2020	<u>24</u>	MINUTE ORDER granting <u>19</u> joint motion for protective order. Signed by Judge Emmet G. Sullivan on 9/9/2020. (lcegs3) (Entered: 09/09/2020)
09/09/2020		MINUTE ORDER granting <u>21</u> motion for leave to file amici curiae brief by MEMBERS OF CONGRESS. Signed by Judge Emmet G. Sullivan on 9/9/2020. (lcegs3) (Entered: 09/09/2020)
09/09/2020	<u>36</u>	AMICUS BRIEF by RICHARD BLUMENTHAL, CORY A. BOOKER, SHERROD BROWN, TOM CARPER, MAZIE K. HIRONO, AMY KLOBUCHAR, EDWARD J. MARKEY, JEFFREY A. MERKLEY, JACK REED, BERNARD SANDERS, JEANNE SHAHEEN, ELIZABETH WARREN, SHELDON WHITEHOUSE, RON WYDEN. (zjf) (Entered: 09/13/2020)
09/10/2020		Set/Reset Deadlines: Defendants Opposition due no later than 12:00PM on 9/11/2020. Plaintiffs Reply due by 9/16/2020. (mac) (Entered: 09/10/2020)
09/10/2020	<u>25</u>	NOTICE of Appearance by Daniela Nogueira on behalf of STATE OF NEW YORK (Nogueira, Daniela) (Entered: 09/10/2020)
09/10/2020	<u>26</u>	

		CERTIFICATE OF SERVICE by STATE OF NEW YORK <i>Complaint, Summonses, and Standing Order served on Defendants on August 31, 2020, by certified mail.</i> (Nogueira, Daniela) (Entered: 09/10/2020)
09/10/2020	<u>27</u>	MOTION for Leave to File <i>Amici Curiae Brief in Support of Plaintiffs' Motion for Preliminary Injunction (Corrected)</i> by BRADY, Team ENOUGH (Attachments: # <u>1</u> Amici Curiae Brief in Support of Plaintiffs' Motion for Preliminary Injunction, # <u>2</u> Text of Proposed Order)(Luk, Arthur) (Entered: 09/10/2020)
09/10/2020	<u>28</u>	NOTICE of Appearance by Douglas N. Letter on behalf of UNITED STATES HOUSE OF REPRESENTATIVES (Letter, Douglas) (Entered: 09/10/2020)
09/10/2020	<u>29</u>	Unopposed MOTION for Leave to File <i>Amicus Curiae Brief In Support of Plaintiff</i> by UNITED STATES HOUSE OF REPRESENTATIVES (Attachments: # <u>1</u> Exhibit Proposed Brief of U.S. House of Representatives as Amicus Curiae in Support of Plaintiff, # <u>2</u> Text of Proposed Order)(Letter, Douglas) (Entered: 09/10/2020)
09/11/2020	<u>30</u>	Memorandum in opposition to re <u>12</u> MOTION for Preliminary Injunction filed by DONALD J. TRUMP, LOUIS DEJOY, UNITED STATES POSTAL SERVICE. (Attachments: # <u>1</u> Declaration (Barber, Cintron, and Curtis), # <u>2</u> Declaration (Colin, Couch, DeChambeau, Glass, Prokity, and Vo), # <u>3</u> Exhibit 1-15, # <u>4</u> Text of Proposed Order)(Borson, Joseph) (Entered: 09/11/2020)
09/11/2020	<u>31</u>	NOTICE of Appearance by Aaron M. Bloom on behalf of CITY OF NEW YORK (Bloom, Aaron) (Entered: 09/11/2020)
09/11/2020	<u>32</u>	NOTICE of Appearance by Dennis Jose Herrera on behalf of CITY AND COUNTY OF SAN FRANCISCO (Herrera, Dennis) (Entered: 09/11/2020)
09/11/2020	<u>33</u>	NOTICE of Appearance by Kevin Yeh on behalf of CITY AND COUNTY OF SAN FRANCISCO (Yeh, Kevin) (Entered: 09/11/2020)
09/11/2020	<u>34</u>	NOTICE of Appearance by Lori N. Tanigawa on behalf of STATE OF HAWAII (Tanigawa, Lori) (Entered: 09/11/2020)
09/11/2020	<u>35</u>	NOTICE of Appearance by Elena Goldstein on behalf of STATE OF NEW YORK (Goldstein, Elena) (Entered: 09/11/2020)
09/14/2020	<u>37</u>	NOTICE of Appearance by Joseph Pepe on behalf of CITY OF NEW YORK (Pepe, Joseph) (Entered: 09/14/2020)
09/14/2020	<u>38</u>	MOTION for Discovery , MOTION to Expedite <i>Discovery</i> by CITY AND COUNTY OF SAN FRANCISCO, CITY OF NEW YORK, STATE OF HAWAII, STATE OF NEW JERSEY, STATE OF NEW YORK (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Text of Proposed Order, # <u>3</u> Exhibit Index, # <u>4</u> Exhibit 1 (Notice of Rule 30(b)(6) deposition), # <u>5</u> Exhibit 2 (Notice of deposition of Robert Cintron), # <u>6</u> Exhibit 3 (Notice of deposition of Angela Curtis), # <u>7</u> Exhibit 4 (Notice of deposition of Robert Justin Glass), # <u>8</u> Exhibit 5 (Plaintiffs' first set of interrogatories to Defendants), # <u>9</u> Exhibit 6 (Plaintiffs' first request for production of documents to Defendants), # <u>10</u> Exhibit 7 (Plaintiffs' requests for admission to Defendants))(Colangelo, Matthew) (Entered: 09/14/2020)
09/14/2020		

		MINUTE ORDER. In view of <u>38</u> motion to expedite discovery, Defendants shall file their opposition by no later than September 18, 2020. Plaintiffs shall file their reply by no later than September 23, 2020. Signed by Judge Emmet G. Sullivan on 9/14/2020. (lcegs3) (Entered: 09/14/2020)
09/15/2020		Set/Reset Deadlines: Defendants Opposition due by 9/18/2020. Plaintiffs Reply due by 9/23/2020. (mac) (Entered: 09/15/2020)
09/15/2020	<u>39</u>	Unopposed MOTION for Leave to File <i>Supplemental Declarations</i> by DONALD J. TRUMP, LOUIS DEJOY, UNITED STATES POSTAL SERVICE (Attachments: # <u>1</u> Declaration Cintron (Supp.), # <u>2</u> Declaration Curtis (Supp.), # <u>3</u> Text of Proposed Order)(Borson, Joseph) (Entered: 09/15/2020)
09/16/2020		MINUTE ORDER granting <u>39</u> unopposed motion to file supplemental declarations. Signed by Judge Emmet G. Sullivan on 9/16/2020. (lcegs3) (Entered: 09/16/2020)
09/16/2020	<u>40</u>	REPLY to opposition to motion re <u>12</u> MOTION for Preliminary Injunction filed by CITY AND COUNTY OF SAN FRANCISCO, CITY OF NEW YORK, STATE OF HAWAII, STATE OF NEW JERSEY, STATE OF NEW YORK. (Attachments: # <u>1</u> Supplemental Fajana Declaration, # <u>2</u> Exhibit Index, # <u>3</u> Exhibit 32, # <u>4</u> Exhibit 33, # <u>5</u> Exhibit 34, # <u>6</u> Exhibit 35, # <u>7</u> Exhibit 36, # <u>8</u> Exhibit 37, # <u>9</u> Exhibit 38)(Nogueira, Daniela) (Entered: 09/16/2020)
09/16/2020	<u>47</u>	Supplemental Declarations re <u>30</u> Memorandum in opposition re <u>12</u> MOTION for Preliminary Injunction by DONALD J. TRUMP, LOUIS DEJOY, UNITED STATES POSTAL SERVICE. (zjf) (Entered: 09/23/2020)
09/17/2020	<u>41</u>	NOTICE of Appearance by Lindsay McKenzie on behalf of STATE OF NEW YORK (McKenzie, Lindsay) (Entered: 09/17/2020)
09/17/2020	<u>42</u>	NOTICE OF SUPPLEMENTAL AUTHORITY by CITY AND COUNTY OF SAN FRANCISCO, CITY OF NEW YORK, STATE OF HAWAII, STATE OF NEW JERSEY, STATE OF NEW YORK (Attachments: # <u>1</u> Exhibit 1 (Order granting plaintiffs' motion for preliminary injunction in Washington v. Trump (E.D. Wash.)))(Colangelo, Matthew) (Entered: 09/17/2020)
09/18/2020	<u>43</u>	RESPONSE re <u>38</u> MOTION for Discovery MOTION to Expedite <i>Discovery</i> filed by DONALD J. TRUMP, LOUIS DEJOY, UNITED STATES POSTAL SERVICE. (Attachments: # <u>1</u> Exhibit A – E.D. Wash. Order, # <u>2</u> Exhibit B – E.D. Wash. 1st Set of Interrogatories and RFP)(Borson, Joseph) (Entered: 09/18/2020)
09/18/2020	<u>44</u>	Joint MOTION for Protective Order ( <i>FRE 502(d) Order</i> ) by DONALD J. TRUMP, LOUIS DEJOY, UNITED STATES POSTAL SERVICE (Attachments: # <u>1</u> Text of Proposed Order)(Borson, Joseph) (Entered: 09/18/2020)
09/21/2020	<u>45</u>	NOTICE OF SUPPLEMENTAL AUTHORITY by CITY AND COUNTY OF SAN FRANCISCO, CITY OF NEW YORK, STATE OF HAWAII, STATE OF NEW JERSEY, STATE OF NEW YORK (Attachments: # <u>1</u> Order granting plaintiffs' motion for preliminary injunction in Jones v. United States Postal Service (S.D.N.Y.))(Fajana, Morenike) (Entered: 09/21/2020)
09/22/2020		MINUTE ORDER granting <u>29</u> motion for leave to file amicus curiae brief in support of Plaintiffs by UNITED STATES HOUSE OF REPRESENTATIVES.

		Signed by Judge Emmet G. Sullivan on 9/22/2020. (lcegs3) (Entered: 09/22/2020)
09/22/2020	<u>46</u>	ORDER granting <u>44</u> joint motion for entry of a Federal Rule of Evidence 502(d) Order. Signed by Judge Emmet G. Sullivan on 9/22/2020. (lcegs3) (Entered: 09/22/2020)
09/22/2020	<u>48</u>	AMICUS BRIEF by UNITED STATES HOUSE OF REPRESENTATIVES. (zjf) (Entered: 09/23/2020)
09/23/2020	<u>49</u>	REPLY to opposition to motion re <u>38</u> MOTION for Discovery MOTION to Expedite <i>Discovery</i> filed by CITY AND COUNTY OF SAN FRANCISCO, CITY OF NEW YORK, STATE OF HAWAII, STATE OF NEW JERSEY, STATE OF NEW YORK. (Nogueira, Daniela) (Entered: 09/23/2020)
09/27/2020	<u>50</u>	NOTICE of <i>Supplemental Materials</i> by DONALD J. TRUMP, LOUIS DEJOY, UNITED STATES POSTAL SERVICE (Attachments: # <u>1</u> Exhibit A – Clarifying Operational Instructions, # <u>2</u> Exhibit B – Stand–Up Talk, # <u>3</u> Exhibit C – Additional Election Mail Resources)(Borson, Joseph) (Entered: 09/27/2020)
09/27/2020		MINUTE ORDER finding as moot <u>23</u> motion for leave to file amici curiae brief by BRADY, Team ENOUGH and granting <u>27</u> motion for leave to file amici curiae brief (corrected) by BRADY, Team ENOUGH. Signed by Judge Emmet G. Sullivan on 9/27/2020. (lcegs1) (Entered: 09/27/2020)
09/27/2020	<u>51</u>	ORDER granting <u>12</u> Motion for Preliminary Injunction. Signed by Judge Emmet G. Sullivan on 9/27/2020. (lcegs1) (Entered: 09/27/2020)
09/27/2020	<u>52</u>	MEMORANDUM OPINION. Signed by Judge Emmet G. Sullivan on 9/27/2020. (lcegs1) (Entered: 09/27/2020)
09/28/2020	<u>53</u>	AMICUS BRIEF <i>In Support of Plaintiffs Motion for Preliminary Injunction</i> by BRADY, TEAM ENOUGH. (Luk, Arthur) (Entered: 09/28/2020)
10/02/2020		MINUTE ORDER granting <u>38</u> Motion for Discovery, Motion to Expedite Discovery. Federal Rule of Civil Procedure 26 "vests the trial judge with broad discretion to tailor discovery narrowly and to dictate the sequence of discovery." <i>Watts v. SEC</i> , 483 F.3d 501, 507 (D.C. Cir. 2007) (quoting <i>Crawford–El v. Britton</i> 523 U.S. 574, 598 (1998)). Courts typically consider five factors when evaluating a motion for expedited discovery under the good–cause standard: "(1) whether a preliminary injunction is pending; (2) the breadth of the discovery requests; (3) the purpose for requesting the expedited discovery; (4) the burden on the defendants to comply with the requests; and (5) how far in advance of the typical discovery process the request was made." <i>Guttenberg v. Emery</i> , 26 F. Supp. 3d 88, 98 (D.D.C. 2014) (quoting <i>In re Fannie Mae Derivative Litig.</i> , 227 F.R.D. 142, 14243 (D.D.C. 2005)). Courts are not limited to these factors, but the factors provide "guidelines for the exercise of the Court's discretion." <i>Id.</i> The Court finds that the good–cause standard is met here. As an initial matter, the Court notes that plaintiffs' motion for preliminary injunction has been granted. See Order, ECF No. 51. Second, the Court has reviewed the discovery requests and has determined that they are narrow and carefully targeted to discover the facts necessary for plaintiffs to establish their claims and rebut anticipated defenses. The Court also notes that the parties state that they have agreed that plaintiffs may rely on discovery provided by the defendants in similar actions, specifically <i>Pennsylvania v. DeJoy</i> , No. 20–cv–4096 (E.D. Pa.) and <i>Washington</i>

		<p>v. Trump, No. 20–cv–3127 (E.D. Wash.). Third, the purpose for requesting the expedited discovery supports granting plaintiffs' motion given the imminence of the election and that there are two claims for which plaintiffs did not seek a preliminary injunction. Fourth, while defendants contend that it will be burdensome to comply, they mostly contend that the requests are duplicative and overlapping, or potentially overlapping. However, as noted above, the parties have agreed to avoid duplicative discovery and plaintiffs' requests for production specifically excludes documents already provided in the similar actions noted above. Furthermore, the time–frame for plaintiffs' requests is limited to a three month period of time. Fifth, while the discovery requests here are being made in advance of the typical discovery process, plaintiffs state they anticipate seeking expedited resolution of their claims given the imminence of the election. Accordingly, it is HEREBY ORDERED that defendants shall serve any objections to plaintiffs' discovery requests by no later than October 7, 2020; and it is FURTHER ORDERED that defendants shall serve their written responses and shall produce all documents responsive to plaintiffs' discovery requests by no later than October 13, 2020; and it is FURTHER ORDERED that depositions shall be taken by no later than October 16, 2020. The parties shall coordinate with the plaintiffs in Vote Forward v. DeJoy, 20–cv–2405, with regard to the taking of depositions. Signed by Judge Emmet G. Sullivan on 10/2/2020. (lcegs3) (Entered: 10/02/2020)</p>
10/05/2020	<u>54</u>	<p>MOTION to Clarify re <u>51</u> Order on Motion for Preliminary Injunction by DONALD J. TRUMP, LOUIS DEJOY, UNITED STATES POSTAL SERVICE (Attachments: # <u>1</u> Declaration Suppl. Glass. Dec., # <u>2</u> Text of Proposed Order)(Borson, Joseph) (Entered: 10/05/2020)</p>
10/07/2020		<p>MINUTE ORDER. In view of <u>54</u> motion to clarify, the parties shall abide by the following briefing schedule: Plaintiffs shall file their opposition by no later than October 12, 2020 at 12:00 PM; and Defendants shall file their reply by no later than October 16, 2020. Signed by Judge Emmet G. Sullivan on 10/7/2020. (lcegs3) (Entered: 10/07/2020)</p>
10/07/2020		<p>Set/Reset Deadlines: Plaintiffs Opposition due no later than 12:00PM on 10/12/2020. Defendants Reply due by 10/16/2020. (mac) (Entered: 10/07/2020)</p>
10/08/2020	<u>55</u>	<p>NOTICE of Appearance by Melissa Lee Medoway on behalf of STATE OF NEW JERSEY (Medoway, Melissa) (Entered: 10/08/2020)</p>
10/12/2020	<u>56</u>	<p>Memorandum in opposition to re <u>54</u> MOTION to Clarify re <u>51</u> Order on Motion for Preliminary Injunction filed by CITY AND COUNTY OF SAN FRANCISCO, CITY OF NEW YORK, STATE OF HAWAII, STATE OF NEW JERSEY, STATE OF NEW YORK. (Attachments: # <u>1</u> Exhibit 1 (Weekly service performance update provided by the USPS to Congress on October 8, 2020))(Colangelo, Matthew) (Entered: 10/12/2020)</p>
10/16/2020	<u>57</u>	<p>REPLY to opposition to motion re <u>54</u> MOTION to Clarify re <u>51</u> Order on Motion for Preliminary Injunction filed by DONALD J. TRUMP, LOUIS DEJOY, UNITED STATES POSTAL SERVICE. (Borson, Joseph) (Entered: 10/16/2020)</p>
10/19/2020	<u>58</u>	<p>MOTION for Summary Judgment by CITY AND COUNTY OF SAN FRANCISCO, CITY OF NEW YORK, STATE OF HAWAII, STATE OF NEW JERSEY, STATE OF NEW YORK (Attachments: # <u>1</u> Text of Proposed</p>

		Order)(Colangelo, Matthew) (Entered: 10/19/2020)
10/19/2020	<u>59</u>	AFFIDAVIT re <u>58</u> MOTION for Summary Judgment <i>Index of Exhibits</i> by CITY AND COUNTY OF SAN FRANCISCO, CITY OF NEW YORK, STATE OF HAWAII, STATE OF NEW JERSEY, STATE OF NEW YORK. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 12, # <u>13</u> Exhibit 13, # <u>14</u> Exhibit 14, # <u>15</u> Exhibit 15, # <u>16</u> Exhibit 16, # <u>17</u> Exhibit 17, # <u>18</u> Exhibit 18, # <u>19</u> Exhibit 19, # <u>20</u> Exhibit 20, # <u>21</u> Exhibit 21, # <u>22</u> Exhibit 22, # <u>23</u> Exhibit 23, # <u>24</u> Exhibit 24, # <u>25</u> Exhibit 25, # <u>26</u> Exhibit 26, # <u>27</u> Exhibit 27, # <u>28</u> Exhibit 28, # <u>29</u> Exhibit 29, # <u>30</u> Exhibit 30, # <u>31</u> Exhibit 31, # <u>32</u> Exhibit 32, # <u>33</u> Exhibit 33, # <u>34</u> Exhibit 34, # <u>35</u> Exhibit 35, # <u>36</u> Exhibit 36, # <u>37</u> Exhibit 37, # <u>38</u> Exhibit 38, # <u>39</u> Exhibit 39, # <u>40</u> Exhibit 40, # <u>41</u> Exhibit 41, # <u>42</u> Exhibit 42, # <u>43</u> Exhibit 43, # <u>44</u> Exhibit 44, # <u>45</u> Exhibit 45, # <u>46</u> Exhibit 46, # <u>47</u> Exhibit 47, # <u>48</u> Exhibit 48, # <u>49</u> Exhibit 49, # <u>50</u> Exhibit 50, # <u>51</u> Exhibit 51, # <u>52</u> Exhibit 52, # <u>53</u> Exhibit 53, # <u>54</u> Exhibit 54, # <u>55</u> Exhibit 55, # <u>56</u> Exhibit 56, # <u>57</u> Exhibit 57, # <u>58</u> Exhibit 58, # <u>59</u> Exhibit 59, # <u>60</u> Exhibit 60, # <u>61</u> Exhibit 61)(Nogueira, Daniela) (Entered: 10/19/2020)
10/19/2020	<u>60</u>	MEMORANDUM re <u>58</u> MOTION for Summary Judgment filed by CITY OF NEW YORK, CITY AND COUNTY OF SAN FRANCISCO, STATE OF NEW JERSEY, STATE OF NEW YORK, STATE OF HAWAII by CITY AND COUNTY OF SAN FRANCISCO, CITY OF NEW YORK, STATE OF HAWAII, STATE OF NEW JERSEY, STATE OF NEW YORK. (Attachments: # <u>1</u> Statement of Facts)(Colangelo, Matthew) (Entered: 10/19/2020)
10/19/2020	<u>61</u>	MOTION to Expedite <i>briefing and consideration of Plaintiffs' motion for summary judgment</i> by CITY AND COUNTY OF SAN FRANCISCO, CITY OF NEW YORK, STATE OF HAWAII, STATE OF NEW JERSEY, STATE OF NEW YORK (Attachments: # <u>1</u> Text of Proposed Order)(Colangelo, Matthew) (Entered: 10/19/2020)
10/20/2020		MINUTE ORDER granting over objection <u>61</u> motion to expedite consideration of Plaintiffs' <u>58</u> motion for summary judgment. It is hereby ORDERED that the parties shall abide by the following briefing schedule: (1) Defendants shall file their opposition and cross motion for summary judgment by no later than October 26, 2020; (2) Plaintiffs shall file their reply and combined opposition by no later than October 29, 2020; and (3) Defendants shall file their reply by no later than November 2, 2020. Signed by Judge Emmet G. Sullivan on 10/20/2020. (lcegs3) (Entered: 10/20/2020)
10/21/2020		Set/Reset Deadlines: Defendants Opposition And Cross Motion For Summary Judgment due by 10/26/2020. Plaintiffs Reply And Combined Opposition due by 10/29/2020. Defendants Reply due by 11/02/2020. (mac) (Entered: 10/21/2020)
10/22/2020	<u>62</u>	ORDER granting in part and denying in part <u>54</u> Motion to Clarify. Signed by Judge Emmet G. Sullivan on 10/22/2020. (lcegs3) (Entered: 10/22/2020)
10/22/2020		Set/Reset Deadlines: Defendants Status Report due no later than 5:00PM on 10/23/2020 (mac) (Entered: 10/22/2020)
10/23/2020	<u>63</u>	NOTICE OF SUPPLEMENTAL AUTHORITY by CITY AND COUNTY OF SAN FRANCISCO, CITY OF NEW YORK, STATE OF HAWAII, STATE OF



		NEW JERSEY, STATE OF NEW YORK (Attachments: # <u>1</u> Exhibit 1 (OIG Report))(Nogueira, Daniela) (Entered: 10/23/2020)
10/23/2020	<u>64</u>	STATUS REPORT by DONALD J. TRUMP, LOUIS DEJOY, UNITED STATES POSTAL SERVICE. (Attachments: # <u>1</u> Exhibit A–G)(Borson, Joseph) (Entered: 10/23/2020)
10/26/2020	<u>65</u>	NOTICE of Appearance by John Robinson on behalf of All Defendants (Robinson, John) (Entered: 10/26/2020)
10/26/2020	<u>66</u>	Cross MOTION for Summary Judgment by DONALD J. TRUMP, LOUIS DEJOY, UNITED STATES POSTAL SERVICE (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Statement of Facts, # <u>3</u> Text of Proposed Order, # <u>4</u> Exhibit Index, # <u>5</u> Exhibit Ex. 1, # <u>6</u> Exhibit Ex. 2, # <u>7</u> Exhibit Ex. 3, # <u>8</u> Exhibit Ex. 4, # <u>9</u> Exhibit Ex. 5, # <u>10</u> Exhibit Ex. 6, # <u>11</u> Exhibit Ex. 7, # <u>12</u> Exhibit Ex. 8, # <u>13</u> Exhibit Ex. 9, # <u>14</u> Exhibit Ex. 10, # <u>15</u> Exhibit Ex. 11, # <u>16</u> Exhibit Ex. 12, # <u>17</u> Exhibit Ex. 13, # <u>18</u> Exhibit Ex. 14, # <u>19</u> Exhibit Ex. 15, # <u>20</u> Exhibit Ex. 16, # <u>21</u> Exhibit Ex. 17, # <u>22</u> Exhibit Ex. 18, # <u>23</u> Exhibit Ex. 19, # <u>24</u> Exhibit Ex. 20, # <u>25</u> Exhibit Ex. 21, # <u>26</u> Exhibit Ex. 22, # <u>27</u> Exhibit Ex. 23, # <u>28</u> Exhibit Ex. 24, # <u>29</u> Exhibit Ex. 25, # <u>30</u> Exhibit Ex. 26, # <u>31</u> Exhibit Ex. 27, # <u>32</u> Exhibit Ex. 28, # <u>33</u> Exhibit Ex. 29, # <u>34</u> Exhibit Ex. 30, # <u>35</u> Exhibit Ex. 31, # <u>36</u> Exhibit Ex. 32, # <u>37</u> Exhibit Ex. 33)(Robinson, John) (Entered: 10/27/2020)
10/27/2020	<u>67</u>	Memorandum in opposition to re <u>58</u> MOTION for Summary Judgment filed by DONALD J. TRUMP, LOUIS DEJOY, UNITED STATES POSTAL SERVICE. (Attachments: # <u>1</u> Defs.' Resp. to Pls.' Statement of Facts, # <u>2</u> Text of Proposed Order)(Robinson, John) (Entered: 10/27/2020)
10/27/2020	<u>68</u>	NOTICE <i>Plaintiffs' notice of intent to respond to Defendants' Status Report</i> by CITY AND COUNTY OF SAN FRANCISCO, CITY OF NEW YORK, STATE OF HAWAII, STATE OF NEW JERSEY, STATE OF NEW YORK re <u>64</u> Status Report (Colangelo, Matthew) (Entered: 10/27/2020)
10/27/2020	<u>69</u>	Unopposed MOTION for Extension of Time to File <i>opposition and cross–motion for summary judgment nunc pro tunc</i> by DONALD J. TRUMP, LOUIS DEJOY, UNITED STATES POSTAL SERVICE (Attachments: # <u>1</u> Text of Proposed Order)(Robinson, John) (Entered: 10/27/2020)
10/27/2020	<u>70</u>	NOTICE <i>of Corrections</i> by DONALD J. TRUMP, LOUIS DEJOY, UNITED STATES POSTAL SERVICE re <u>66</u> Cross MOTION for Summary Judgment , <u>67</u> Memorandum in Opposition, (Attachments: # <u>1</u> Exhibit 23 (Corrected), # <u>2</u> Exhibit 14 (Corrected))(Robinson, John) (Entered: 10/27/2020)
10/27/2020		MINUTE ORDER granting <u>69</u> unopposed motion for extension of time to file opposition and cross–motion for summary judgment nunc pro tunc. Signed by Judge Emmet G. Sullivan on 10/27/2020. (lcegs3) (Entered: 10/27/2020)
10/29/2020	<u>71</u>	Memorandum in opposition to re <u>66</u> Cross MOTION for Summary Judgment filed by CITY AND COUNTY OF SAN FRANCISCO, CITY OF NEW YORK, STATE OF HAWAII, STATE OF NEW JERSEY, STATE OF NEW YORK. (Attachments: # <u>1</u> Text of Proposed Order, # <u>2</u> Statement of Facts Plaintiffs' Counter–Statement of Facts, # <u>3</u> Declaration of Morenike Fajana, # <u>4</u> Exhibit 62, # <u>5</u> Exhibit 63, # <u>6</u> Exhibit 64, # <u>7</u> Exhibit 65, # <u>8</u> Exhibit 66, # <u>9</u> Exhibit 67)(Colangelo, Matthew) (Entered: 10/29/2020)

10/29/2020	<u>72</u>	REPLY to opposition to motion re <u>58</u> MOTION for Summary Judgment filed by CITY AND COUNTY OF SAN FRANCISCO, CITY OF NEW YORK, STATE OF HAWAII, STATE OF NEW JERSEY, STATE OF NEW YORK. (Attachments: # <u>1</u> Text of Proposed Order)(Colangelo, Matthew) (Entered: 10/29/2020)
10/31/2020	<u>73</u>	NOTICE of Plaintiffs' request for leave to attend related case conferences by CITY AND COUNTY OF SAN FRANCISCO, CITY OF NEW YORK, STATE OF HAWAII, STATE OF NEW JERSEY, STATE OF NEW YORK (Colangelo, Matthew) (Entered: 10/31/2020)
10/31/2020		MINUTE ORDER. In view of <u>73</u> request for leave to attend, it is hereby ORDERED that Plaintiffs are granted leave to attend the daily status conferences scheduled in the related cases Richardson v. Trump, 20–2262; NAACP v. U.S. Postal Service, 20–2295; and Vote Forward v. DeJoy, 20–2405. Plaintiffs shall contact Mr. Mark Coates, the Courtroom Deputy Clerk, for the dial–in information. Signed by Judge Emmet G. Sullivan on 10/31/2020. (lcegs3) (Entered: 10/31/2020)
11/02/2020	<u>74</u>	REPLY to opposition to motion re <u>66</u> Cross MOTION for Summary Judgment filed by DONALD J. TRUMP, LOUIS DEJOY, UNITED STATES POSTAL SERVICE. (Attachments: # <u>1</u> Defendants' Reply to Counter–Statement of Material Facts, # <u>2</u> Exhibit 34, # <u>3</u> Exhibit 35)(Robinson, John) (Entered: 11/02/2020)
11/04/2020	<u>75</u>	Unopposed MOTION for Extension of Time to File Answer re <u>1</u> Complaint, by DONALD J. TRUMP, LOUIS DEJOY, UNITED STATES POSTAL SERVICE (Attachments: # <u>1</u> Text of Proposed Order)(Robinson, John) (Entered: 11/04/2020)
11/05/2020		MINUTE ORDER granting <u>75</u> unopposed motion for extension of time. Defendants shall answer or otherwise respond to the complaint by no later than December 15, 2020. Signed by Judge Emmet G. Sullivan on 11/5/2020. (lcegs3) (Entered: 11/05/2020)
11/06/2020		Set/Reset Deadlines: Defendant Answer Or Otherwise Response To The Complaint due by 12/15/2020. (mac) (Entered: 11/06/2020)
11/27/2020	<u>76</u>	NOTICE OF APPEAL TO DC CIRCUIT COURT as to <u>62</u> Order on Motion to Clarify, <u>52</u> Memorandum & Opinion, <u>51</u> Order on Motion for Preliminary Injunction by LOUIS DEJOY, DONALD J. TRUMP, UNITED STATES POSTAL SERVICE. Fee Status: No Fee Paid. Parties have been notified. (Borson, Joseph) (Entered: 11/27/2020)

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

STATE OF NEW YORK, et al,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity  
as President of the United States, *et al.*,

Defendants.

Civil Docket No. 20-cv-2340 (EGS)

**NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN that Defendants, Donald J. Trump, in his official capacity as President of the United States, Louis DeJoy, in his official capacity as Postmaster General of the United States, and the United States Postal Service, appeal to the United States Court of Appeals for the District of Columbia Circuit from the following orders: this Court's September 27, 2020 Order and Memorandum Opinion (Docket Nos. 51 and 52), and this Court's October 22, 2020 Order (Docket No. 62).

Dated: November 27, 2020

Respectfully submitted,

JEFFREY BOSSERT CLARK  
Acting Assistant Attorney General

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STATE OF NEW YORK, *et al.*,

Plaintiffs,

v.

No. 20-cv-2340 (EGS)

DONALD J. TRUMP, *in his  
official capacity as President  
of the United States, et al.*,

Defendants.

**ORDER**

On September 27, 2020, the Court preliminarily enjoined Defendants from enforcing four Postal Policy Changes that the United States Postal Service ("USPS" or "Postal Service") announced and implemented in June and July 2020: (1) the removal of high-speed sorting machines nationwide; (2) the prohibition of "'late trips' and 'extra trips'"; (3) the "Expedited to Street / Afternoon Sortation" initiative; and (4) the decision to change the "USPS policy of treating election mail and political mail marked as marketing mail on an expedited First-Class basis." Mem. Op., ECF No. 52 at 5-8; Order, ECF No. 51. On October 5, 2020, Defendants filed a Motion for Clarification regarding three aspects of the Court's Order. Mot. Clarification ("Defs.' Mot."), ECF No. 54. On October 12, 2020, Plaintiffs filed their Opposition, ECF No. 56; and on October 16, 2020,

Defendants filed their Reply, ECF No. 57. The Motion is ripe for the Court's adjudication.

First, Defendants request that "this Court clarify that its Order prospectively enjoins the Postal Service from removing mail sorting machines from service, but that it does not require the Postal Service to return disassembled machines into service (something that may not be possible)." Defs.' Mot., ECF No. 54 at 4. Plaintiffs oppose this request as inconsistent with this Court's Order and "with instructions from other courts that have likewise enjoined USPS practices in recent weeks." Pls.' Opp'n, ECF No. 56 at 3. Plaintiffs also argue that Defendants have made no showing that "it would be impossible or impractical to restore specific sorting machines to service in Plaintiffs' jurisdictions," for example, those machines that were "covered with a tarp, or otherwise roped off." *Id.* at 4 (citing Coradi Decl., ECF No. 12-34 ¶ 7). In reply, Defendants state they "agree with Plaintiffs that this Court may clarify that its requirement regarding machines applies to the extent that 'if it is determined that it is necessary to add processing capability to fulfill [USPS's] service commitments with regard to Election Mail, available processing equipment will be returned to service,' Clarifying Operational Instructions, at 3, ECF No. 50, consistent with the orders of other district courts." Defs.' Reply, ECF No. 57 (citing Order ¶ 3, ECF No. 81, *Washington v.*

*Trump*, No. 20-cv-3127 (SAB) (E.D. Wash. Sept. 17, 2020); Joint Stipulation to Stay Case in Light of Settlement Agreement, ECF No. 38, *Bullock v. USPS*, No. 20-cv-0079 (BMM) (D. Mont. Oct. 14, 2020)).

Second, Defendants request that the Court's order to treat Election Mail marked as Marketing Mail on an expedited First-Class basis does not require USPS to transport such mail by air. Defs.' Mot., ECF No. 54 at 5. Plaintiffs do not object to Defendants' request "[t]o the extent Defendants can comply with the Court's injunction and treat all election mail in accordance with First Class delivery speeds without relying on air transport," but argue that "there is no basis for the Court to make any categorical statement that its Order never requires delivery of election mail by air." Pls.' Opp'n, ECF No. 56 at 5-6. In reply, Defendants clarify that "the only harm to Postal Service operations comes from requiring Marketing Mail sent by election officials or related entities to voters to travel by air (which would be a significant operational change, and potentially impossible at this late date just prior to the election), because Marketing Mail is an entirely separate class of mail to which different service standards apply." Defs.' Reply, ECF No. 57 at 3. "[A]ll ballots sent by voters to their election officials are First-Class Mail, and they will travel by

air, rather than trucks, . . . so that they can complete their journey within the published service standards.” *Id.*

Third, Defendants “request that this Court clarify that the Postal Service is not required to treat Political Mail in the same manner as Election Mail, i.e., ‘mailed as marketing mail on an expedited First-Class basis.’” Defs.’ Mot., ECF No. 54 at 9-10. Plaintiffs do not oppose this request. Pls.’ Opp’n, ECF No. 56 at 7-8.

“[T]here is no Federal Rule of Civil Procedure specifically governing ‘motions for clarification.’” *United States v. Philip Morris USA Inc.*, 793 F. Supp. 2d 164, 168 (D.D.C. 2011). “The general purpose of a motion for clarification is to explain or clarify something ambiguous or vague, not to alter or amend.” *Id.* “Although such a motion cannot open the door to ‘re-litigat[ing] a matter that the court has considered and decided,’ *Sai v. Transp. Sec. Admin.*, No. 14-cv-403, slip op. at 5 (D.D.C. Aug. 19, 2015), ECF No. 74 (citation omitted), courts in this Circuit have encouraged parties to file motions for clarification when they are uncertain about the scope of a ruling, see *United States v. Volvo Powertrain Corp.*, 758 F.3d 330, 344 (D.C. Cir. 2014); *Barnes v. Dist. of Columbia*, 289 F.R.D. 1, 12-13 (D.D.C. 2012), and entertaining such motions seems especially prudent if the parties must implement the ruling at issue at subsequent stages of the litigation.” *All. of*



*Artists & Recording Cos. v. Gen. Motors Co.*, 306 F. Supp. 3d 413, 418-19 (D.D.C. 2016).

The Court concludes that Defendants have met the threshold requirements for seeking clarification, insofar as the Court's Order is reasonably susceptible to differing interpretations.

Accordingly, the Court hereby **ORDERS** that the Court's Order, ECF No. 51, is clarified to reflect the following:

(1) if any post office, distribution center, or other postal facility will be unable to process Election Mail for the November 2020 election in accordance with First Class delivery standards because of USPS's removal and decommissioning of sorting machines from service, available processing equipment will be restored to service to ensure that USPS can comply with its prior policy of delivering Election Mail in accordance with First Class delivery standards;

(2) Defendants are not required to ship Election Mail entered as Marketing Mail by any particular means (such as by air), but must employ measures to expedite the handling of all Election Mail, which may include moving them by air when such a method is consistent with practices and policies used in past elections; and

(3) Defendants are not required to treat Political Mail, which is defined as mail sent by political candidates, political action committees, and similar organizations that engage in issue advocacy or to advocate for candidates or other things, such as initiatives, that may appear on the ballot, that is mailed as Marketing Mail on an expedited First-Class basis.

It is **FURTHER ORDERED** that Defendants are directed to file a status report by no later October 23, 2020 at 5:00 PM informing the Court of its efforts to comply with this Court's instructions here and with its previous Order, ECF No. 51.

**SO ORDERED.**

**Signed:     Emmet G. Sullivan**  
**United States District Judge**  
**October 22, 2020**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STATE OF NEW YORK, *et al.*,

Plaintiffs,

v.

No. 20-cv-2340 (EGS)

DONALD J. TRUMP, *in his  
official capacity as President  
of the United States, et al.*,

Defendants.

MEMORANDUM OPINION

**I. Introduction**

Plaintiffs, the States of New York, Hawaii, and New Jersey; the City of New York; and the City and County of San Francisco filed this lawsuit against Defendants Donald J. Trump, in his official capacity as President of the United States; Louis DeJoy ("Mr. DeJoy"), in his official capacity as Postmaster General of the United States; and the United States Postal Service ("USPS" or "Postal Service") alleging the following claims: (1) *Ultra Vires* Agency Action—Postal Accountability and Enhancement Act; (2) *Ultra Vires* Agency Action—Postal Reorganization Act; and (3) violation of the Elections Clause of the United States Constitution. Plaintiffs seek a preliminary injunction with regard to their Postal Accountability and Enhancement Act claim. Upon consideration of the Plaintiffs' motion, the response, and

reply thereto, the applicable law, and the entire record, the Court **GRANTS** Plaintiffs' motion.

## **II. Background**

### **A. Statutory and Regulatory Framework**

In the Postal Reorganization Act ("PRA"), Public Law 91-375, 84 Stat. 719 (Aug. 12, 1970), Congress replaced the Post Office Department with the United States Postal Service as "an independent establishment of the executive branch of the Government of the United States, under the direction of a Board of Governors, with the Postmaster General as its chief executive officer." 39 C.F.R. § 1.1. The PRA also created an independent oversight body for the USPS, the Postal Rate Commission. 39 U.S.C. § 501. Congress passed the PRA to "[i]nsulate" the management of the USPS "from partisan politics . . . by having the Postmaster General responsible to the [Postal Rate] Commission, which represents the public interest only, for his conduct of the affairs of the Postal Service." H.R. Rep. No. 91-1104, 3660-61 (1970).

In the Postal Accountability and Enhancement Act ("PAEA"), Pub. L. No. 109-435, 120 Stat. 3198 (Dec. 20, 2006) (codified at 39 U.S.C. § 3600 et seq.), Congress replaced the Postal Rate Commission with the Postal Regulatory Commission ("PRC" or "Commission") and "strengthened its role." *Carlson v. Postal Regul. Comm'n*, 938 F.3d 337, 340 (D.C. Cir. 2019).

The USPS is responsible for "develop[ing] and promot[ing] adequate and efficient postal services." 39 U.S.C. § 3661(a). "When the Postal Service determines that there should be a change in the nature of postal services [that] will generally affect service on a nationwide or substantially nationwide basis," it must "submit a proposal, within a reasonable time prior to the effective date of such proposal, to the Postal Regulatory Commission requesting an advisory opinion on the change." *Id.* § 3661(b). This provision was enacted in the PRA, and the only change made in the PAEA was to replace the original "Postal Rate Commission" with the "Postal Regulatory Commission."

Following the submission of a proposal, "[t]he Commission shall not issue its opinion on any proposal until an opportunity for hearing on the record under [the Administrative Procedure Act] has been accorded the Postal Service, users of the mail, and an officer of the Commission who shall be required to represent the interests of the general public. The opinion shall be in writing and shall include a certification by each Commissioner agreeing with the opinion that in his judgment the opinion conforms to the policies established under this title." 39 U.S.C. § 3661(c).

## B. Factual Background

### 1. The COVID-19 Pandemic

Plaintiffs assert that the COVID-19 pandemic has increased reliance on mail delivered by the USPS. See Mem. Supp. Mot. Prelim. Inj. (“Mot.”), ECF No. 12-1 at 8.<sup>1</sup> According to Plaintiffs, “[b]ecause COVID-19 is ‘primarily spread through person-to-person contact,’ Ku<sup>[2]</sup> Decl., ECF No. 12-13] ¶ 13, state and local governments, including Plaintiffs here, have undertaken serious efforts to minimize in-person gatherings.” *Id.* Plaintiffs further state that “some . . . have transformed their plans for the November 2020 election to facilitate voting by mail.” *Id.* (citing Adinaro<sup>3</sup> Decl., ECF No. 12-4 ¶ 9; Kellner<sup>4</sup> Decl., ECF No. 12-12 ¶¶ 16-17; Ku Decl., ECF No. 12-13 ¶¶ 8-10; P.L. 2020, ch.72 (N.J. August 28, 2020) (providing that New Jersey’s November General Election is to be conducted primarily by vote-by-mail in part to reduce the risk of community spread of COVID-19 at polling locations)). Those Plaintiffs that have

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<sup>1</sup> When citing electronic filings throughout this Opinion, the Court cites to the ECF page number, not the page number of the filed document.

<sup>2</sup> Leighton Ku is a Professor of Public Health Policy and Management and Director of the Center for Health Policy Research at the Milken Institute School of Public Health, George Washington University.

<sup>3</sup> David Adinaro is the Deputy Commissioner for Public Health Services for the New Jersey Department of Health.

<sup>4</sup> Douglas Kellner is the Co-Chair of the New York State Board of Elections.

“mail-based election systems” in place “seek to preserve [them] during a pandemic.” *Id.* (citing Henricks<sup>5</sup> Decl. ¶ 3, ECF No. 12-9; Kaohu<sup>6</sup> Decl., ECF No. 12-11 ¶ 3; Takahashi<sup>7</sup> Decl., ECF No. 12-19 ¶ 3.) Plaintiffs state they “have also expended time, money, and resources to educate the public about social distancing, see Adinaro Decl., ECF No. 12-4 ¶ 8, and to continue to meet their legal obligations to their residents and to administer public benefits programs by increased reliance on U.S. mail, Banks<sup>8</sup> Decl., ECF No. 12-5 ¶¶ 4-7, 11, 14; Newton<sup>9</sup> Decl., ECF No. 12-15 ¶ 9.” *Id.*

## **2. USPS Postal Policy Changes**

In June and July 2020, the USPS announced and implemented four changes (collectively, “Postal Policy Changes”) to how it collects, processes and delivers mail. First, on June 17, 2020, the USPS announced that it would be removing 671 high-speed sorting machines nationwide “over the next several months.” Pls.’ Ex. 17, ECF No. 12-20 at 2-4.

Second, on July 10, 2020, the USPS announced an “operational pivot” to make “immediate, lasting, and impactful

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<sup>5</sup> Jon Henricks is the County Clerk for the County of Hawaii.

<sup>6</sup> Kathy Kaohu is the County Clerk for the County of Maui.

<sup>7</sup> Glen Takahashi is the City Clerk for the City and County of Honolulu.

<sup>8</sup> Steven Banks is the Commissioner of the New York City Department of Social Services.

<sup>9</sup> Jack Newton is the Director of the Public Benefits Unit as Bronx Legal Services.

changes in our operations and culture.” Pls.’ Ex. 21, ECF No. 12-24 at 2. These changes included prohibiting “late trips” and “extra trips.” *Id.* “[I]t has long been typical for postal drivers to depart for post offices or delivery points a short period *after* the prescribed time if needed to ensure that all the mail for that truck would be loaded before departure.” Coradi<sup>10</sup> Decl., ECF No. 12-34 ¶ 13. “Extra” trips are non-scheduled delivery trips, which ensure that the agency can maintain the necessary flexibility to timely deliver mail to 160 million addresses for six days a week, *id.* ¶¶ 5, 14; and have long allowed the agency to account for daily fluctuations in mail volume, processing malfunctions or errors, and other disruptions, *id.* ¶¶ 13-4. Late trips and extra trips “are needed adjustments to adequately administer a system responsible for delivering over 470 million pieces of mail per day. They are features of the postal system, not bugs.” *Id.* ¶ 14.

The USPS knew that prohibiting these trips would result in delayed mail delivery: “One aspect of these changes that may be difficult for employees is that—temporarily—we may see mail left behind or mail on the workroom floor or docks (in P&DCs), which

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<sup>10</sup>Peter Coradi has been the National Business Agent “A” for the Clerk Division, New York Region of the American Postal Workers Union since November 2001. Clerks in the Clerk Division are responsible for, among other things, mail processing, bulk mail entry, retail windows, and call centers.



is not typical.” Pls.’ Ex. 21, ECF No. 12-24 at 2. By August 13, 2020, the USPS had reduced the number of late trips by 71 percent. Pls.’ Ex. 19, ECF No. 12-22 at 2. Defendants have clarified that late or extra trips are not “banned”; however, they acknowledge that they continue “at a reduced level.” Suppl. Cintron Decl., ECF No. 39-1 ¶ 4. On September 21, 2020, USPS also issued “Operational Instructions” providing that “transportation, in the form of late or extra trips that are reasonably necessary to complete timely mail delivery, is not to be unreasonably restricted or prohibited. Managers are authorized to use their best business judgment to meet our service commitments.” See Ex. 1 to Notice Suppl. Material, ECF No. 50-1 at 4.

Third, the USPS announced another “initiative” that prohibited mail carriers in certain cities from spending time in the morning sorting mail so they could “leave for the street earlier.” Pls.’ Ex. 22, ECF No. 12-25 at 2. This meant that carriers were being ordered to not deliver mail that had arrived overnight, but rather sort it in the afternoon, meaning that it would not be delivered until the next day. *Id.* On August 24, 2020, Mr. DeJoy testified that he stopped this pilot project. See House Oversight and Reform Committee Hearing Tr. (“House Committee Hearing”), Aug. 24, 2020, Defs.’ Ex. 14, ECF No. 30-3 at 449.

Fourth, on or around July 29, 2020, the USPS General Counsel informed 46 states and the District of Columbia that if the states did not pay First Class postage on ballots sent to voters, there would be a risk that voters would not receive their ballots in time to return them by mail. See U.S. Postal Service letters to states, Wash. Post (Aug. 17, 2020), <https://context-cdn.washingtonpost.com/notes/prod/default/documents/d1b752f9-f8c9-4c18-b548-4eb9668c672a/note/36253644-7029-4dd3-bd1c-f824054400c2>.<sup>11</sup> This was a change to the USPS policy of treating election mail and political mail mailed as marketing mail on an expedited First-Class basis. Pls.' Ex. 30, 12-33 at 12.

It is undisputed that the USPS did not seek an advisory opinion pursuant to Section 3661(b) from the PRC prior to implementing these changes.

### **3. USPS Postal Policy Changes Have Led to Nationwide Delays and Continue to Have a Nationwide Impact**

USPS records indicate that nationally, on-time delivery of First-Class Mail began to decline in late June 2020, going from roughly 90 to 94 percent prior to the implementation of the Postal Policy changes to 82 percent in early August. Pls.' Ex. 28, ECF No. 12-31 at 11. In the August 13, 2020 email to all

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<sup>11</sup>The Court takes judicial notice of the letters from the USPS to 46 states and the District of Columbia. Fed. R. Evid. 201(b)(2).

USPS employees, Mr. DeJoy acknowledged that “this transformative initiative has had unintended consequences that impacted our overall service levels.” Pls.’ Ex. 19, ECF No. 12-22 at 2; see also House Committee Hearing, Defs.’ Ex. 14, ECF No. 30-3 at 455 (Mr. DeJoy testifying that mitigating late trips and extra trips “was not expected to have the impact it had for the duration of the period that it had”).

On August 18, 2020, Mr. DeJoy issued a statement that the USPS would be suspending “some longstanding operational initiatives—efforts that predate my arrival at the Postal Service—that have been raised as areas of concern as the nation prepares to hold an election in the midst of a devastating pandemic.” Pls.’ Ex. 20, ECF No. 12-23 at 2. Specifically, Mr. DeJoy stated that: (1) “[r]etail hours at Post Offices will not change”; (2) “[m]ail processing equipment and blue collection boxes will remain where they are”; (3) “[n]o mail processing facilities will be closed”; (4) “overtime has, and will continue to be, approved as needed.” *Id.*; see also House Committee Hearing, ECF No. 30-3 at 484 (Mr. DeJoy testifying that he halted the pilot program, the removal of collection boxes, reducing hours at postal retail centers, and the removal of flat and mail sorting machines).

Except for “mail processing equipment,” the suspension did not apply to the rest of the Postal Policy Changes at issue

here. See also Senate Homeland Security and Government Affairs Committee Hearing (“Senate Committee Hearing”), Aug. 21, 2020, Defs.’ Ex. 5, ECF No. 30-2 at 107 (Mr. DeJoy stating that the policy of mitigating extra trips would not be suspended); *id.* at 108 (Mr. DeJoy stating that none of the mail processors that had been removed would be brought back).

With regard to election mail, Mr. DeJoy testified before the Senate Committee that states would not have to use First-Class Mail for election mail. *Id.* at 110. However, in his testimony before the House Committee, he testified that states and election boards should follow the recommendation in letters from the USPS General Counsel to the states and the District of Columbia that election officials use First-Class Mail to mail ballots to voters. House Committee Hearing, Defs.’ Ex. 14, ECF No. 30-3 at 433; see also *id.* at 394 (Mr. DeJoy testifying that the USPS “will try to fulfill” “objectives” for “normal processing procedures plus enhanced procedures” to ensure the ballots get delivered in time).

USPS records indicate that nationally, on-time delivery of First-Class Mail as of August 22, 2020 was slightly above 85 percent. Pls.’ Ex. 28, ECF No. 12-31 at 11.

## **B. Procedural Background**

Plaintiffs filed this lawsuit on August 25, 2020. On September 2, 2020, they filed a motion for a preliminary

injunction, which requests that the Court enjoin the defendants from enforcing the Postal Policy Changes. See Mot., ECF No. 12-1. The defendants filed their opposition on September 11, 2020. See Defs.' Opp'n Mot. Prelim. Inj. ("Defs.' Opp'n"), ECF No. 30. The Plaintiffs filed their reply brief on September 16, 2020. See Pls.' Reply ("Reply"), ECF No. 40. The motion is ripe for the Court's consideration.

### **III. Standard of Review**

"A plaintiff seeking a preliminary injunction must establish [1] that [they are] likely to succeed on the merits, [2] that [they are] likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *Aamer v. Obama*, 742 F.3d 1023, 1038 (D.C. Cir. 2014) (alteration in original) (quoting *Sherley v. Sebelius*, 644 F.3d 388, 392 (D.C. Cir. 2011)). Where the federal government is the opposing party, the balance of equities and public interest factors merge. See *Nken v. Holder*, 556 U.S. 418, 435 (2009). A preliminary injunction is an "extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). "The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held." *Univ. of Tex. v. Camenisch*,

451 U.S. 390, 395 (1981). In this Circuit, the four factors have typically been evaluated on a "sliding scale," such that if "the movant makes an unusually strong showing on one of the factors, then it does not necessarily have to make as strong a showing on another factor." *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1291-92 (D.C. Cir. 2009).

In the wake of the Supreme Court's decision in *Winter v. Natural Resources Defense Council*, 555 U.S. 7 (2008), "the D.C. Circuit has suggested that a positive showing on all four preliminary injunction factors may be required." *Holmes v. FEC*, 71 F. Supp. 3d 178, 183 n.4 (D.D.C. 2014); see also *Sherley*, 644 F.3d at 393 ("[W]e read *Winter* at least to suggest if not to hold that a likelihood of success is an independent, free-standing requirement for a preliminary injunction.") (quotation marks omitted). Nonetheless, "the Circuit has had no occasion to decide this question because it has not yet encountered a post-*Winter* case where a preliminary injunction motion survived the less rigorous sliding-scale analysis." *ConverDyn v. Moniz*, 68 F. Supp. 3d 34, 46 n.2 (D.D.C. 2014).

#### **IV. Analysis**

Plaintiffs argue that they are likely to succeed on the merits of their Section 3661 claim because the USPS "failed to submit the Postal Policy Changes to the Postal Regulatory Commission in advance for an advisory opinion as required under

39 U.S.C. § 3661(b) (and the Commission's rules), despite their significant effect on postal service nationwide," Mot., ECF No. 12-1 at 16; and that this Court has the authority to review the Postal Policy changes as *ultra vires* agency action, *id.*

Defendants respond that Plaintiffs lack Article III standing, that district courts lack subject matter jurisdiction over Section 3661 claims, and that Plaintiffs' claim does not satisfy the requirements for *ultra vires* review. Defs.' Opp'n, ECF No. 30 at 32, 35, 39.

**A. Plaintiffs Are Likely To Succeed On The Merits Of Their 39 U.S.C. § 3661(b) Claim**

**1. Plaintiffs Likely Have Standing To Bring This Challenge**

To establish standing, "a plaintiff must show (1) an 'injury in fact,' (2) a sufficient 'causal connection between the injury and the conduct complained of,' and (3) a 'likel[ihood]' that the injury 'will be redressed by a favorable decision.'" *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2341 (2014) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). "Standing to seek . . . forward-looking injunctive relief requires [Plaintiff] to show [that it] is suffering an ongoing injury or faces immediate injury. For a future injury, that means submitting evidence showing that there is a substantial risk that the harm will recur." *Narragansett Indian Tribal Historic Preservation Office v. FERC*, 949 F.3d 8,

13 (D.C. Cir. 2020) (internal quotation marks, citations, and alterations in original omitted).

"The party invoking federal jurisdiction bears the burden of establishing these elements." *Lujan*, 504 U.S. at 561 (citations omitted). "Since they are not mere pleading requirements but rather an indispensable part of the plaintiff's case, each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." *Id.*

Defendants contend that Plaintiffs lack standing for two reasons.<sup>12</sup> First, they cannot show a causal connection because they have "produce[d] no evidence that any delay in mail delivery will come from the reduction in capacity of mail processing machines," noting that the "mail processing machines are still only being utilized at a sixty-five percent rate . . . which means that there is ample extra capacity." Defs.' Opp'n, ECF No. 30 at 33. However, Plaintiffs have provided evidence that the elimination of the machines has and will continue to

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<sup>12</sup> Defendants also argue that plaintiffs lack standing because they allege an injury by the "expedited to Street/Afternoon Sortation" initiative, which has been suspended. Defs. Opp'n, ECF No. 30 at 26. Plaintiffs respond—and the Court agrees—that defendants "may not defeat [p]laintiffs' standing by voluntarily suspending just one of several offending policies, especially where there is no prohibition on that policy's resumption." Reply, ECF No. 40 at 13.



cause delayed mail. See Coradi Decl., ECF No. 12-31 ¶ 9

("[E]mployees report astonishing amounts of delayed mail in facilities that I have visited multiple times . . . I have never heard anything like it in my 36 years serving the U.S. Postal Service and its employees."); *id.* ¶ 16 ("With fewer sorting machines for letter mail and flat mail, Postal employees must adapt the remaining machines to accommodate more volume or sort letter and flat mail manually.").

Second, Defendants concede that the policy change regarding extra and late trips resulted in delayed mail in the past, but argue that "Plaintiffs cannot show that USPS's activities are harming Plaintiffs *now and in the future*," stating that "while there 'was a temporary decline in meeting service standards' in mid-July" that decline was addressed and "'service performance is rapidly returning to early July levels.'" Defs.' Opp'n, ECF No. 30 at 33. Defendants also argue that Plaintiffs' complaint about election mail delays are entirely speculative, noting "the enormous efforts that USPS has put into place (and will continue or supplement through the Election) to ensure that ballots are timely delivered." *Id.* at 34. Defendants also argue that Plaintiffs have not established that the decline was due to reducing unnecessary trips rather than staffing shortages due to COVID-19. *Id.* at 34.

However, Plaintiffs have provided evidence that reducing extra or late trips will necessarily cause delays in the delivery of mail. See Grimmer<sup>13</sup> Decl., ECF No. 40-3 ¶ 10 (decrease in the number of extra or late trips will delay the delivery of letters); Goldway<sup>14</sup> Decl., ECF No. 40-5 ¶ 31 (“It is my opinion, based on my two decades of experience reviewing Postal Service operations, that eliminating local flexibility and requiring rigid adherence to transportation scheduled would negatively impact service performance.”). Moreover, Plaintiffs have provided proof that delays, both locally and nationally, have continued. See *Failure to Deliver*, U.S. Senate Committee on Homeland Security and Governmental Affairs, Minority Staff Report, ECF No. 40-9 at 3 (finding that nationwide during the second week of August, “85 million more deliveries were late in a single week compared to what the late deliveries would have been that week under on-time delivery rates before the changes”); *id.* (finding that “[s]ome parts of the country saw on-time delivery drop by 15-20 percentage points in the weeks following Mr. DeJoy’s July 2020 changes”). USPS’s own data shows

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<sup>13</sup> Justin Grimmer, a Professor of Political Science at Stanford University, made a preliminary assessment of the impact of the policy change limiting the number of extra and late trips based on the USPS August 31, 2020 powerpoint.

<sup>14</sup> Ruth Goldway served on the U.S. Postal Regulatory Commission from 1998 to 2015, having been appointed and reappointed by Presidents Clinton, George W. Bush, and Obama.

declines in on-time delivery of First-Class Mail continuing into August. Ex. 37, ECF No. 40-8. Moreover, in an August 13, 2020 email to all USPS employees, Mr. DeJoy acknowledged that “this transformative initiative has had unintended consequences that impacted our overall service levels.” Pls.’ Ex. 19, ECF No. 12-22 at 2. Finally, Plaintiffs have rebutted Defendants’ argument that the decline was due to reducing unnecessary trips rather than staffing shortages due to COVID-19 by pointing out that the sharp decline in on-time deliveries occurred in July and August 2020, months after COVID-19 infections began to spike in the United States in March 2020. Reply, ECF No. 40 at 11.

Accordingly, Plaintiffs have shown that there is a substantial likelihood that the on-going non-speculative harms they allege caused by mail delays are “fairly traceable” to the Postal Policy Changes. *Lujan*, 504 U.S. at 560.

## **2. This Court Likely Has Subject Matter Jurisdiction Over The Section 3661 Claim**

Defendants contend that this Court lacks subject matter jurisdiction over “complaints regarding” Section 3661 because such complaints must first be made to the PRC and then appealed to the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”). Defs.’ Opp’n, ECF No. 30 at 35. The statutory scheme provides as follows. 39 U.S.C. § 409(a) provides that “[e]xcept as otherwise provided in this title, the

United States district courts shall have original but not exclusive jurisdiction over all actions brought by or against the Postal Service.” One of the exceptions to this original jurisdiction is 39 U.S.C. § 3662, which provides that “[a]ny interested person . . . who believe[s] the Postal Service is not operating in conformance with the requirements of a provision of . . . this chapter (or regulations promulgated under any of these provisions) may lodge a complaint with the Postal Regulatory Commission . . . .” Section 3662(b) requires the PRC to respond to the complaint within 90 days and that if a complaint is not timely responded to, a petition for review may be filed with the D.C. Circuit, which also has jurisdiction to review final orders or decisions of the PRC.

Plaintiffs’ complaint alleges a procedural violation—that USPS failed to comply with the requirement that “[w]hen the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis, it shall submit a proposal, within a reasonable time prior to the effective date of such proposal, to the Postal Regulatory commission requesting an advisory opinion on the change.” 39 U.S.C. § 3661. Section 3661(c) requires that the opinion shall not be issued until there is opportunity for notice and comment under applicable provisions of the Administrative Procedure Act.

Defendants contend that “[c]ourts have repeatedly held that 19 U.S.C. §§ 3662 and 3663 constitute the exclusive jurisdictional remedy for complaints about postal services that fall within the statutory provisions specifically identified in section 3662.” Defs.’ Opp’n, ECF No. 30 at 36. However, Defendants have provided no mandatory authority to support their assertion that Sections 3662 and 3663 constitute the exclusive jurisdictional remedy for a claim that the USPS has failed to comply with the procedural requirements of Section 3661.

“Whether a statute is intended to preclude initial judicial review is determined by the statute’s language, structure, and purpose, its legislative history, and whether the claims can be afforded meaningful review.” *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 307 (1994) (internal citation omitted). The language of the statute is broad: “[a]ny interested person . . . who believe[s] the Postal Service is not operating in conformance with the requirements of a provision of . . . this chapter (or regulations promulgated under any of these provisions) may lodge a complaint with the Postal Regulatory Commission . . . .” 39 U.S.C. § 3662. This could certainly be read to mean that the failure of the USPS to comply with the procedural requirement set for in Section 3661 would be encompassed by Section 3662. Plaintiff argues that the use of the permissive “may” in Section 3662 coupled with the mandatory

phrasing "shall" in Section 3662(c) shows Congress did not intend to limit jurisdiction over Section 3661 claims. Reply, ECF No. 40 at 14. The statute consistently uses the word "may" when setting forth the procedure for filing complaints and for seeking appellate review of the PRC's determination (or failure to make a determination): any interested person "may" lodge a complaint with the PRC, and if the interested person is unsatisfied with the response or does not receive a timely response, they "may" file a petition with the D.C. Circuit. 39 U.S.C. §§ 3662(a), 3663. The use of the permissive "may" coupled with the use of the mandatory "shall" suggests that Sections 3662(a) and 3663 were not intended to be the exclusive avenue for bringing a procedural challenge to the USPS's failure to comply with Section 3661. See *Bennett v. Panama Canal Co.*, 475 F.2d 1280, 1828 (D.C. Cir. 1973) ("[T]he permissive interpretation is conclusively proven to be correct [together with the particular legislative history] by the fact that when in the same statute Congress intended a mandatory direction it used the auxiliary 'shall' not 'may'-a contrast which is generally significant . . ."). This interpretation is strengthened because the statute expressly provides that this Court has original jurisdiction "over all actions brought by or against the Postal Service" unless "otherwise provided in [title 39]." 39 U.S.C. § 409(a).

The availability of judicial review for the USPS's failure to comply with the procedural requirements in Section 3661 is consistent with the legislative history of the PRA. In the discussion of the section of the PRA that established the "procedures for changes in postal service," the House Committee Report states the "[t]he postal service is—first, last, and always—a public service" and that the PRA "require[s] [Postal Services management] to seek out the needs and desires of its present and potential customers—the American public." H.R. Rep. No. 91-1104 at 3668. The Committee Report describes provisions in the act that "contain[] specific provisions requiring justification and review of changes in service." *Id.*; see also *Buchanan v. U.S. Postal Serv.*, 508 F.2d 259, 263 n.6 (5th Cir. 1975) ("[T]he procedures mandated by [Section] 3661 are sufficiently elaborate to amount to a significant impediment in the path of the decision-making process of the Postal Service.").

The Court must also consider whether the claim may be reviewed because there is no other meaningful or adequate avenue for judicial review. See *Thunder Basin Coal Co.*, 510 U.S. at 307. District court jurisdiction may not be implicitly precluded based on consideration of the following factors: (1) if "'a finding of preclusion could foreclose all meaningful judicial review'"; (2) if the claim is "'wholly collateral to a statute's

review provisions'"; and (3) if the claims are "'outside the agency's expertise'" to discern "whether the particular claims at issue fall outside an overarching congressional design."<sup>15</sup> *Jaresky v. SEC*, 803 F.3d 9, 17 (D.D.C. 2015) (quoting *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 489-90 (2010)). Mindful of the fact that the 90-day window for the PRC to respond to a complaint brought pursuant to Section 3661, Defendants contend that it does not matter that the PRC cannot provide immediate relief because eventual relief is sufficient as a matter of law. Defs.' Opp'n, ECF No. 30 at 39 n.11. However, the authority upon which Defendants rely, *American Federation of Government Employees, AFL-CIO v. Trump*, 929 F.3d 748 (D.D.C. 2019), is inapposite. There, the court held that meaningful judicial review was not foreclosed because Plaintiffs were unable to obtain "'pre-implementation' review of executive orders or immediate relief barring all agencies from implementing the executive orders,'" *id.* at 755-56, because there the parties agreed to consolidate their preliminary injunction requests with the merits, see Scheduling Order, Civil Action No. 18-1261, ECF No. 16 at 1.

With regard to the first consideration—whether Plaintiffs would be denied meaningful review—it is clear that they would.

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<sup>15</sup> Defendants' assertion that the three factors must be met is incorrect. See *Jaresky v. SEC*, 803 F.3d at 17.



Plaintiffs have shown that the USPS implemented dramatic operational changes that have resulted in delayed mail that “have negatively affected and will continue to negatively affect Plaintiffs’ ability not only to provide necessary services to residents in need and administer their own laws and regulations, but also to protect public health by providing safe and effective means to vote by mail in the upcoming general election.” Reply, ECF No. 40 at 16. Accordingly, even if there was a “fairly discernible” intent in the statutory scheme to preclude district court jurisdiction, requiring Plaintiffs to go through the PRC process would deny them meaningful review. See *Berkley v. Mountain Valley Pipeline, LLC*, 896 F.3d 624, 631 (4th Cir. 2018) (noting that “plaintiffs are denied meaningful review when they are subject to some additional and irremediable harm beyond the burdens associated with the dispute resolution process”) (internal quotation marks and citations omitted); *Krescholleck v. S. Stevedoring Co.*, 78 F.3d 868, 875 (3d Cir. 1996) (noting that the plaintiff had “alleged a sufficiently serious irreparable injury to lead us to conclude that the administrative review process is insufficient to afford him full relief”). And persuasive authority holds that this factor is the “most important.” *Berkley*, 896 F.3d at 630. Accordingly, this first factor weighs in favor of finding Congress intended district courts to have jurisdiction over claims such as this

one brought by Plaintiffs. The second consideration—whether the claim is wholly collateral to the statutory scheme—is “‘related’ to whether ‘meaningful judicial review’ is available, and the two considerations are analyzed together.” *Am. Fed’n of Gov’t Emps., AFL-CIO v. Trump*, 929 F.3d 748, 758 (D.C. Cir. 2019) (quoting *Jarskey*, 803 F.3d at 22). The question to ask is “whether the plaintiffs ‘aimed to obtain the same relief they could seek in the agency proceeding.’” *Id.* at 758-60 (quoting *Jarskey*, 803 F.3d at 23). Here, the relief Plaintiffs seek cannot be meaningfully redressed through filing a Section 3662 complaint.

The third consideration is whether the claim is “beyond the expertise” of the PRC. Plaintiffs’ procedural claim does not require the “agency expertise” the statutory procedures contemplate. *Berkley*, 896 F.3d at 630. Accordingly, precluding district court jurisdiction here would completely deny plaintiff meaningful review given the timing of the implementation of the Postal Policy Changes.

### **3. Plaintiffs’ Section 3661(b) Claim Is Likely Reviewable Pursuant To The *Ultra Vires* Doctrine**

While as a general matter “the Postal Service is exempt from review under the Administrative Procedure Act, . . . its actions are reviewable to determine whether it has acted in excess of its statutory authority.” *N. Air Cargo v. U.S. Postal*

*Serv.*, 674 F.3d 852, 858 (D.C. Cir. 2012). “The scope of Non-APA review is narrow . . . [and] is available only to determine whether the agency has acted *ultra vires*—that is whether it has exceeded its statutory authority.” *Sears, Roebuck & Co. v. U.S. Postal Serv.*, 844 F.3d 260, 265 (D.C. Cir. 2016) (quotation marks and citations omitted).

Defendants contend that *ultra vires* review is unavailable because: (1) Plaintiffs cannot show that USPS acted “in excess of its delegated powers and contrary to a specific prohibition” because they cannot show that USPS violated Section 3661(b); and (2) Plaintiffs have a “meaningful and adequate means of vindicating [their] statutory rights” because they can file a complaint with the PRC pursuant to Section 3662. Defs.’ Opp’n, ECF No. 30 at 40 (citing *Nat’l Air Traffic Controllers Ass’n AFL-CIO v. Fed. Serv. Impasses Panel*, 437 F.3d 1256, 1258 (D.C. Cir. 2006) (internal quotation marks and citations omitted)).

The Court is persuaded that Plaintiffs claim is reviewable:

“Even where Congress is understood generally to have precluded review, the Supreme Court has found an implicit but narrow exception, closely paralleling the historic origins of judicial review for agency actions in excess of jurisdiction.” *Griffith v. FLRA*, 842 F.2d 487, 492 (D.C. Cir. 1988) (citing the leading case, *Leedom v. Kyne*, 358 U.S. 184, 188, 79 S.Ct. 180, 183-84, 3 L.Ed.2d 210 (1958) (finding judicial review proper despite statutory preclusion of judicial review, where the NLRB acted “in excess of its delegated

powers and contrary to a specific prohibition”  
in the NLRA)).

*Aid Ass’n for Lutherans v. U.S. Postal Serv.*, 321 F.3d 116, 1172-73 (D.C. Cir. 2003). Plaintiffs claim here is that the USPS failed to comply with the requirement Congress set forth in Section 3661. Accordingly, Plaintiffs’ claims “clearly admit of judicial review.” *Id.* at 1173.

#### **4. USPS Likely Failed To Comply With Section 3661(b)**

The scope of non-APA review includes, among other things, “a straightforward question of statutory interpretation.” *Nat’l Ass’n of Postal Sup’rs v. U.S. Postal Serv.*, 602 F.2d 420, 432 (D.C. Cir. 1979). In conducting this review, “[t]he judicial role is to determine the extent of the agency’s delegated authority and then determine whether the agency has acted within that authority. In this as in other settings, courts owe a measure of deference to the agency’s own construction of its organic statute, but the ultimate responsibility for determining the bounds of administrative discretion is judicial.” *Id.* at 432-33 (internal citations omitted).

Section 3661(b) provides that “[w]hen the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis, it shall submit a proposal, within a reasonable time prior to the effective date of such

proposal, to the Postal Regulatory Commission requesting an advisory opinion on the change.”

Persuasive authority has construed Section 3661(b) as follows:

The language of the statute . . . indicates that three factors must coexist before 3661 applies. First, there must be a ‘change.’ This implies that a quantitative determination is necessary. There must be some meaningful impact on service. Minor alterations which have a minimal effect on the general class of postal users do not fall within 3661. Second, the change must be ‘in the nature of postal services.’ This involves a qualitative examination of the manner in which postal services available to the user will be altered. Third, the change must affect service ‘on a nationwide or substantially nationwide basis.’ A broad geographical area must be involved. These three factors combine to demonstrate that Congress intended the safeguards of 3661 to apply only when changes of significance were contemplated.

*Buchanan*, 508 F.2d at 263.

There is no dispute that the USPS did not comply with Section 3661(b) prior to implementing the Postal Policy Changes at issue in this case. Defendants argue that the Postal Policy Changes do not implicate Section 3661(b) because: (1) there has been no “meaningful impact on service;” (2) postal services available to the user have not been altered; and (3) the changes have not affected service in a broad geographical area. Defs.’ Opp’n, ECF No. 30 at 42 (quoting and citing *Buchanan* 508 F.2d at 263). In support, Defendants argue that sorting machines are

being removed pursuant to a long-existing policy; not a change, noting that the USPS is in Phase 6 of this initiative. *Id.*

Second, there is no change with regard to election mail because it is being treated the same as it has in the past. *Id.* at 43.

Third, the ESAS pilot program, which has been suspended, was not national in scope. *Id.* Fourth, USPS has not prohibited extra or late trips, but rather has “renewed its emphasis on adhering to its published schedule.” *Id.* Defendants conclude that this latter change is “precisely the type of management direction to which [S]ection 3661 does not apply.” *Id.* Finally, Defendants contend that pursuant to past practice, the types of “nationwide changes that trigger [Section] 3661’s review are general changes to postal facility hours or service standards for mail delivery.” *Id.* at 44.

The Court is persuaded that Plaintiffs are likely to succeed on their claim that Defendants violated Section 3661(b) by failing to submit the new transportation policy to the PRC. First, the new transportation policy was a “change” because it has had a “meaningful impact on service.” *Buchanan*, 508 F.2d at 263. Plaintiffs have provided evidence showing that the reduction in extra and late trips has had a meaningful impact on service because it has resulted in nationwide delays. *See supra* at 7-8. Second, Plaintiffs have demonstrated that the reduction in sorting machines was dramatically accelerated beginning in

January 2020 as compared with the prior fiscal year. DeChambeau<sup>16</sup> Decl., ECF No. 30-2 ¶ 21. Specifically, while 101 machines were removed in FY 2019, 711 machines were removed in FY 2020 as of August 18, 2020, resulting in a nearly 15 percent reduction in capacity. *Id.* Defendants have provided no explanation for the sudden acceleration of the removal of the sorting machines.

Plaintiffs have also demonstrated that the combination of the reduction of late trips, extra trips and reduced sorting capacity puts the timely delivery of election mail at risk. Coradi Decl., ECF No. 12-34 ¶ 17 (“If postal employees are not able to make the necessary daily adjustments via late trips, extra trips, and the full fleet of sorting machines for the 2020 election season, I am deeply concerned about whether the U.S. Postal Service will be able to deliver election mail as quickly as it has in the past. Since I began as a letter carrier in 1984, it has been standard practice to treat election mail as First Class mail with delivery times of one to three days—or better—regardless of whether it was marked as Marketing Mail, which has a delivery time of three to 10 days.”); *id.* ¶ 18 (“Given the recent U.S. Postal Service policy changes which have reduced sorting capacity and limitations on late trips and extra trips, I fear that the dedicated employees of the U.S. Postal

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<sup>16</sup> Jason Chambeau is the Headquarter Director of Processing Operations for the United States Postal Service.

Service will be prevented from making the necessary adjustment to accommodate potential influxes of election mail. Election mail includes ballots, voter registration cards, absentee voting applications, and polling place notifications. If delivery is being significantly delayed in August, which, in my experience is when mail volume is typically lower, the risk of even more dramatic delays beginning in the fall is high.”).

Plaintiffs have also demonstrated that Defendants’ position in this litigation that the Postal Policy Changes are not “changes” is not supported based on USPS’s own statements. See Email from Mr. DeJoy to All Employees, August 13, 2020, ECF No. 12-22 at 2 (“In order to transform . . . we must make a significant number of changes that will not be easy . . . .”); *id.* (“Unfortunately, this transformative initiative has had unintended consequences that impacted our overall service levels. However, recent changes are not the only contributing factors.”); *id.* at 3 (“I ask that you bear with me while we work through these changes to transform for the better . . . .”).

Second, the change was “in the nature of postal services,” 39 U.S.C. § 3661(b), because it qualitatively altered “the manner in which postal services [are] available to the user,” *Buchanan*, 508 F.2d at 263. As stated above, Plaintiffs point to evidence showing that the reduction in extra and late trips



combined with the reduction in sorting machines resulted in nationwide delays.

Third, the change affected service "on a nationwide or substantially nationwide basis," 39 U.S.C. § 3661(b), because "[a] broad geographical area [was] involved," *Buchanan*, 508 F.2d at 263. Plaintiffs have submitted evidence that the Postal Policy Changes have resulted in delays on a nationwide basis. See *supra* at 16-17.

While it is clear that Congress did not intend for the courts to micromanage the operations of the USPS, requiring the USPS to comply with the statutory requirement that it obtain an advisory opinion from the PRC and provide for notice and comment prior to implementing "a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis" is not micro-managing; it is requiring the USPS to act within its statutory authority. Furthermore, Congress clearly intended Section 3661 to require an opportunity for public participation and for independent review before the USPS implements service changes that will have a broad effect. The broad scope of the Postal Policy Changes demonstrates on its face that it is precisely the kind of change that is to be the subject of the public-participation and independent review safeguards provided by Section 3661.

Finally, defendants argue that because Plaintiffs have a “meaningful and adequate means of vindicating their statutory rights” by filing a complaint with the PRC and then seek judicial review in the D.C. Circuit if unsatisfied, they cannot establish *ultra vires* jurisdiction. Defs.’ Opp’n, ECF No. 30 at 41. Plaintiffs respond—and the Court agrees as explained above—that they lack a “meaningful and adequate means of vindicating their statutory rights” since “section 3662 would not afford [them] judicial review of an adverse PRC ruling within a timeframe that would allow for the meaningful vindication of their right to notice and opportunity to participate as required under 39 U.S.C. § 3661(b).” Reply, ECF No. 40 at 19.

**B. Plaintiffs Face Irreparable Harm**

“In this Circuit, a litigant seeking a preliminary injunction must satisfy ‘a high standard’ for irreparable injury.” *ConverDyn*, 68 F. Supp. 3d at 46 (quoting *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297). The movant must demonstrate that it faces an injury that is “both certain and great; it must be actual and not theoretical,” and of a nature “of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm.” *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (quotation marks and emphasis omitted).

Plaintiffs argue that the Postal Policy Changes impede their ability to combat the spread of COVID-19 because the failure to timely deliver mail and other reductions in service standards results in more in-person interactions with government officials and adversely affects their "ability to provide safe alternatives to in person voting." Mot., ECF No. 12-1 at 21-22. Defendants counter that Plaintiffs have failed to meet their burden of establishing "that mail delays were necessarily the result of the challenged policies, or that future delays, if there are any, would be the result of" the Postal Policy Changes. Defs.' Opp'n, ECF No. 30 at 46-47. However, the Court has already determined that Plaintiffs have shown that there is a substantial likelihood that the on-going non-speculative harms they allege caused by mail delays are "fairly traceable" to the Postal Policy Changes. See *supra* at 14-17.

Defendants further counter that this alleged harm is to the citizens of the states and that States cannot bring *parens patriae* claims against the federal government, and that even if they could, Plaintiffs' injury is entirely speculative. Defs.' Opp'n, ECF No. 30 at 48-49. However, Plaintiffs have provided evidence that the efforts to mitigate the spread of COVID-19 is aimed at protecting the public health of their respective jurisdictions as a whole. See Adinaro Decl. ECF No. 12-4 ¶¶ 7-8 (describing the efforts of the New Jersey Department of Health

to mitigate the spread of COVID-19); Ku Decl. (describing the efforts of New York, New Jersey, and Hawaii to institute absentee or mail voting to mitigate the spread of COVID-19). Impeding these mitigation efforts results in harm to government Plaintiffs as well as the residents of the states. *New York v. U.S. Dep't of Homeland Sec.*, No. 19 Civ. 7777, 2020 WL 4347264, at \*10 (S.D.N.Y. July 29, 2020) (finding that the state plaintiffs adequately demonstrated irreparable harm where the Governmental "Plaintiffs provide[d] ample evidence that the [challenged conduct] deters immigrants from seeking testing and treatment for COVID-19, which in turn impedes public efforts in the Governmental Plaintiffs jurisdictions to stem the spread of the disease."), *stayed on other grounds*, No. 20-2537, 2020 WL 5495530 (2d Cir. Sept. 11, 2020).

Defendants also argue that Plaintiffs' argument that their efforts to curb the spread of COVID-19 will be undermined by mail delays because more residents will opt to vote in person as speculative. Defs.' Opp'n, ECF No. 30 at 25. At this juncture, Plaintiffs need only demonstrate the likelihood of an increased risk of injury. *Winter*, 555 U.S. at 22 ("Our frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is likely in the absence of an injunction."). Plaintiffs have provided ample evidence that mail delays are likely to cause more residents to

vote in person which in turn is likely to impede the spread of the virus. See Kellner Decl., ECF No. 12-12 ¶ 14 (“Due to [voters not receiving their ballots on time], additional voters went to polling places who would not have otherwise needed to, adding to significant crowds and delays at certain polling sites for in-person voting. Longer wait times at polling sites is of particular concern to election officials as this increases the risk of exposure to COVID-19, thereby threatening the health and safety of voters, voting officials, and the larger community.”); Ku Decl., ECF No. 12-13 ¶¶ 17-18 (describing empirical evidence demonstrating that “voting in crowded polling places increases the risk of infection”); *id.* ¶ 12 (describing polls indicating fewer people intend to vote by mail due to concerns about mail delays).

Finally, Defendants argue that all residents need to do is “mail their ballots a reasonable time before the election (which is approximately two months away).” Defs.’ Opp’n, ECF No. 30 at 39. However, as Plaintiffs point out, the ability of the residents of New York, Hawaii, and New Jersey to mail their ballots is not entirely within the residents’ control since ballots are not mailed to the residents two months before the election.

Plaintiffs’ harm is “both certain and great . . . actual and not theoretical” because mail delays are impeding

Plaintiffs' ability to combat the spread of a highly contagious and deadly disease and are impeding their ability to provide safe alternatives to in-person voting. As of September 27, 2020, 204,607 Americans have died from the disease and over seven million people have been infected with it. See Coronavirus Resource Center, <https://coronavirus.jhu.edu/map.html>.

Plaintiffs' harm is also "of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm" because Election Day is November 3, 2020.

Because Plaintiffs have demonstrated that absent an injunction they will suffer immediate and irreparable harm to their ability to combat the spread of COVID-19 and to provide safe alternatives to in-person voting, the Court need not reach whether Plaintiffs have also demonstrated the Postal Policy Changes have resulted in direct, unrecoverable financial harms nor whether Plaintiffs have demonstrated that the Postal Policy changes disrupt Plaintiffs' administration of federal, state, and local laws and impose additional, unnecessary administrative burdens.

**C. The Balance Of Equities And Public Interest Favor An Injunction**

The balance-of-equities factor directs the Court to "balance the competing claims of injury and . . . consider the effect on each party of the granting or withholding of the

requested relief.'" *ConverDyn*, 68 F. Supp. 3d at 52 (quoting *Winter*, 555 U.S. at 24). "When the issuance of a preliminary injunction, while preventing harm to one party, causes injury to the other, this factor does not weigh in favor of granting preliminary injunctive relief." *Id.*; see also *Serono Labs., Inc. v. Shalala*, 158 F.3d 1313, 1326 (D.C. Cir. 1998). By contrast, the balance of equities may favor a preliminary injunction that serves only "'to preserve the relative positions of the parties until a trial on the merits can be held.'" *Rufer v. FEC*, 64 F. Supp. 3d 195, 205 (D.D.C. 2014) (quoting *Camenisch*, 451 U.S. at 395). "The purpose of . . . interim relief is not to conclusively determine the rights of the parties, *University of Tex. V. Camenisch*, 451 U.S. 390, 395 (1981), but to balance the equities as the litigation moves forward. In awarding a preliminary injunction a court must also 'conside[r] . . . the overall public interest,' *Winter*, 555 U.S. at 26." *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2087 (2017).

Defendants fail to identify any equities in their favor and do not contest the equities in the Plaintiffs' favor.

Defendants' only arguments are that they are "undertaking extensive efforts to facilitate the timely delivery of Election Mail," that the two of the four postal policies are not changes—"one has been stopped, and the fourth has been mischaracterized"—and that ensuring compliance with the

injunction "could require the Court to act as an overseer of the agency's day-to-day activities." Defs.' Opp'n, ECF No. 30 at 50.

Here, the balance of the equities and the public interest favor an injunction. It is clearly in the public interest to mitigate the spread of COVID-19, to ensure safe alternatives to in-person voting, and to require that the USPS comply with the law. The equities balance in favor of Plaintiffs because the relief sought is a targeted preliminary injunction that prohibits Defendants from continuing to implement the Postal Service Policies with respect to which an advisory opinion from the PRC should have been obtained prior to implementation. Furthermore, the proposed injunction does not contemplate the Court becoming involved in overseeing the day-to-day operations of the USPS.



## **V. Conclusion**

For the foregoing reasons, the Court **GRANTS** the Plaintiffs' motion for a preliminary injunction. Any request to stay this decision pending appeal will be denied for substantially the same reasons as those articulated in this Opinion. An appropriate Order accompanies this Memorandum Opinion.

**SO ORDERED.**

**Signed:     Emmet G. Sullivan**  
**United States District Judge**  
**September 27, 2020**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STATE OF NEW YORK, *et al.*,

Plaintiffs,

v.

No. 20-cv-2340 (EGS)

DONALD J. TRUMP, *in his  
official capacity as President  
of the United States, et al.*,

Defendants.

**ORDER**

For the reasons stated in the accompanying Memorandum Opinion, it is hereby

**ORDERED** the Plaintiffs' Motion for Preliminary Injunction is **GRANTED**; and it is further

**ORDERED** that a Preliminary Injunction is hereby entered against Defendants; and it is further

**ORDERED** that pursuant to the Order, Defendants are **HEREBY ENJOINED** from enforcing the Postal Policy Changes; and it is further

**ORDERED** that any request to stay this Order pending appeal will be denied for the reasons stated in the accompanying Memorandum Opinion.

SO ORDERED.

Signed: Emmet G. Sullivan  
United States District Judge  
September 27, 2020