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

No. 22-5317

IN RE:
SIMON V. KINSELLA
Petitioner *pro se*

REPLY TO FEDERAL DEFENDANTS' OPPOSITION TO PETITIONER'S AMENDED PETITION FOR WRIT OF MANDAMUS

Challenging a District Court Transfer

SIMON V. KINSELLA, Petitioner *Pro Se*
P.O. Box 792, Wainscott, N.Y. 11975
Tel: (631) 903-9154
Si@oswSouthFork.Info

TABLE OF CONTENTS

IN RE: SIMON V. KINSELLA 1
TABLE OF CONTENTS 2
GLOSSARY OF ABBREVIATIONS 2
TABLE OF AUTHORITIES 3
Cases 3
Statutes 4
INTRODUCTION 4
THREE CONDITIONS BEFORE A COURT GRANTS A WRIT OF MANDAMUS 9
1. Petitioner has "no other adequate means to attain the relief …." 10
2. Petitioner has a "clear and indisputable" right to the issuance of the writ. 11
3. "[T]he writ is appropriate under the circumstances." 18
CONCLUSION 21

GLOSSARY OF ABBREVIATIONS

APA	Administrative Procedure Act
BOEM	U.S. Bureau of Ocean Energy Management
EDNY	Eastern District of New York
EPA	U.S. Environmental Protection Agency
FOIA	Freedom of Information Act
NEPA	National Environmental Policy Act.
OCSLA	Outer Continental Shelf Lands Act
OGE	Office of Government Ethics
OREP	BOEM's Office of Renewable Energy Programs
PFAS	Per/and Polyfluoroalkyl Substances
SFEC	South Fork Export Cable
SFW	South Fork Wind LLC

TABLE OF AUTHORITIES

Cases

Armstrong v. Manzo, 380 U.S. 545, 552 (1965)	9
Bankers Life Casualty Co. v. Holland, 346 U.S. 379, 383 (1953)	11
Belgiovine Enter. v. City Fed. Sav. Bank, 748 F. Supp. 33, 35 (D.D.C. 1990)	17
Cheney v. U.S. District Court for the District of Columbia, 542 U.S. 367, 380, 124 S.Ct. 2576, 159 L.Ed.2d 459 (2004)	9, 10, 11, 17, 20
Ex parte Fahey, 332 U.S. 258, 259–60, 67 S.Ct. 1558, 91 L.Ed. 2041 (1947)	9, 10
Fine v. McGuire, 433 F.2d 499 (D.C. Cir. 1970) 528 U.S. 167, 181–84, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000)	9, 12
Grannis v. Ordean, 234 U.S. 385, 394 (1914)	9
In re Clinton, 973 F.3d 106, 117 (D.C. Cir. 2020)	20
In re Kellogg Brown & Root, Inc., 756 F.3d 754, 760 (D.C. Cir. 2014)	9, 10, 11,
In re Scott, (709 F.2d 717, 720 (D.C. Cir. 1983)	12, 14
Mathews v. Eldridge, 424 U.S. 319, 333 (1976).	9
Van Dusen v. Barrack, 376 U.S. 612, 645–46 (1964)	15, 17
Will, 389 U.S., at 95." 542 U.S. 367, 380 (2004)	11

Statutes

Administrative Procedure Act	5 U.S.C. §§ 701 through 706	14, 15
Change of venue	28 U.S.C. § 1404	14, 17
Freedom of Information Act (FOIA)		4, 12
Freedom of Information Act (FOIA)	5 U.S.C. § 552 'special venue'	17
National Environmental Policy Act	42. U.S.C. §§ 4321	4-5
Outer Continental Shelf Lands Act	43. U.S.C. §§ 1331	4-5
Federal Rules of Civil Procedure	Rule 9(b) (FRAUD).	4-5

INTRODUCTION

In July 2022, Petitioner filed a Complaint against Federal Defendants— the Environmental Protection Agency (EPA), Department of the Interior (DOI), and Bureau of Ocean Energy Management (BOEM) (22-cv-02147, ECF 1). The Complaint alleges reckless violations of the National Environmental Policy Act (NEPA), Outer Continental Shelf Lands Act (OCSLA), Freedom of Information Act (FOIA), and violation of Petitioner's Constitutional rights to due process.

On November 2, 2022, Petitioner filed (as of right) First Amended Complaint (*id.*, ECF 34-2) that includes eight new individuals working for BOEM and new claims regarding seven instances where BOEM falsified material facts in its environmental review. BOEM's fraudulent representations benefited the developer to the public detriment. The proposal is for an offshore wind farm with onshore transmission facilities.

The First Amended Complaint's claims are against Federal Defendants—

Claims alleged in Complaint (July 20, 2022)		
Claim	Violation	**Federal Defendants' failure to**—
1	NEPA	Include adverse environmental impacts
2	NEPA	Assume responsibility for environmental analyses
3	NEPA	Evaluate and verify information
4	CZMA	Verify Federal Consistency Certification
5	NEPA	Specify an underlying purpose or need
6	NEPA	Consider viable alternatives
7	OCSLA	Guarantee safety and environmental safeguards
8	OCSLA	Ensure proper environmental safeguards
9	OCSLA	Ensure consistency with maintenance of competition
10	EO 12898	Comply with Executive Order: environmental justice
11	US Constitution: Comply with Due Process Clause	
12	FOIA	Failure to comply with FOIA & NEPA

New claims alleged in First Amended Complaint (November 2, 2022)		
Claim	Violation	**Federal Defendants' Fraudulent statements regarding**—
13	FRAUD	Adverse population-level impacts on Atlantic cod
14	FRAUD	Adverse socioeconomic impact: Project Cost ($2 bn)
15	FRAUD	Water quality: PFAS Contamination
16	FRAUD	The BOEM's Purpose and Needs Statement
17	FRAUD	The Sunrise Wind Alternative

See Exhibit 1, First Amended Complaint, Claims for Relief (at 86–140)

Federal Defendants state that the "district court acknowledged substantial interests on both sides and concluded that the public interest ultimately outweighed Mr. Kinsella's preference" (Fed. Defs. Resp. in Opp., Doc. 1991955, at 15, PDF 21). However, Federal Defendants *do not* state that the court acknowledged the

interests *equally*. In fact, during the November 9 Hearing, the district court did *not* acknowledge Petitioner's First Amendment Complaint's claims. The district court restricted the hearing to possible impacts from *the developer's* construction activities. But the developer, South Fork Wind LLC (SFW), is *not* a named defendant. By ignoring Petitioner's claim that *all* concern BOEM's environmental review, the district court erroneously concludes that the controversy of the case is SFW's construction. Please look at the claims again. No claim concerns SFW's construction or SFW. This case is about BOEM's environmental review or lack thereof (*not* SFW).

The district court accepted the First Amended Complaint (Exhibit 2, Docket 22-cv-02147, Minute Order 11/10/2022), including new allegations of fraud, upfront (Exhibit 1, ECF 34-2, at 3–10). However, the district court did *not* consider or even acknowledge new allegations of fraud or *any other* claims during the November 9 Hearing; it focused solely on SFW, *not* BOEM.

To argue that there was no hearing on Federal Defendant's Motion to Transfer (ECF 11) is to understate the district court's prejudicial practice of denying Petitioner the opportunity to be heard in response to motions filed by Federal Defendants five times in two months (from September 13 through November 10, 2022) as follows—

1. On September 13, 2022, the district court granted Federal Defendants' Motion to Extend Time "for The Government to file its responsive pleading to the Complaint" that Federal Defendants filed *only the day before*. The district court denied Petitioner the opportunity to respond to that motion— "Although the plaintiff has not yet informed the Court of their position on the matter, having considered the motion and for good cause shown, it is ORDERED that the motion is GRANTED" (MINUTE ORDER 09/13/2022) (*see* Exhibit 2, Docket 22-cv-02147). Eight months have passed, and neither Federal Defendants nor SFW has answered the complaint.
2. On October 9, 2022 (Sunday), the district court granted Federal Defendants' Motion to Strike or stay the briefing on Petitioner's Summary Judgement Motion (stayed). The court waited *only three days* and offered no reason for its decision. It was the second time Petitioner was denied the opportunity to respond.
3. On November 9, 2022, the district court granted Federal Defendants' "request to strike that motion [for Partial Summary Judgement] at this stage. It is premature given that the defendants haven't formally responded." Exhibit 10, Hearing Tr 11/09/2022 (at 3:7-9). The district court granted Federal Defendants' motion without allowing

Petitioner the opportunity to respond since the court stayed the briefing on that motion (on October 9). It was the third time Petitioner was denied a right to respond.

4. On November 9, 2022, "the Court DENIES Plaintiff's Motion for a Temporary Restraining Order [ECF 35] (filed November 2) for the reasons stated on the record at the hearing" (MINUTE ORDER 11/10/2022). During the hearing, the district court did *not* consider or discuss *any* of the First Amended Complaint's claims regarding the environmental review or address the substantive arguments in Petitioner's (corrected) Motion for Temporary Restraining Order and Preliminary Injunction [ECF 36]. The hearing was deficient in findings of fact (i.e., it excluded claims of fraud) and reasoning (*see* Exhibit 3, Kinsella Affidavit). It was the fourth time Petitioner was denied rights to respond and a fair hearing.
5. On November 10, 2022, the district court granted Federal Defendants' Motion to Transfer the case to the Eastern District of New York (EDNY) without a hearing on new claims of fraud (in Petitioner's First Amended Complaint, filed November 2) introduced *after* filing his Surreply (on October 11) (ECF 27). It was the fifth time in two

months that the district court had denied Petitioner his right to a hearing and his Constitutional right to due process.

"The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' *Armstrong* v. *Manzo*, 380 U.S. 545, 552 (1965). See *Grannis* v. *Ordean*, 234 U.S. 385, 394 (1914)" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

This Mandamus Petition challenges the district court's Order granting Federal Defendants' Motion to Transfer. In *Fine v. McGuire*, the U.S. Supreme Court "observe[s] that while the discretion conferred by 28 U.S.C. § 1404(a) [to transfer a civil action] is broad it is not untrammeled" 433 F.2d 499, 501 (D.C. Cir. 1970). While the Supreme Court notes that the district court has discretion, it does *not* extend past the Constitutional limits of due process. "[A]s a matter of fundamental fairness the judge must accord an opportunity to be heard at least whenever there is a possibility that the hearing may develop facts bearing on the decision" *Fine v. McGuire*, 433 F.2d 499, 501 (D.C. Cir. 1970).

THREE CONDITIONS BEFORE A COURT GRANTS A WRIT OF MANDAMUS

This Court held that "[m]andamus is a 'drastic and extraordinary' remedy 'reserved for really extraordinary causes.' *Cheney v. U.S. District Court for the District of Columbia,* 542 U.S. 367, 380, 124 S.Ct. 2576, 159 L.Ed.2d 459 (2004) (quoting *Ex parte Fahey,* 332 U.S. 258, 259–60, 67 S.Ct. 1558, 91 L.Ed.

2041 (1947)).” *See In re Kellogg Brown & Root, Inc.*, 756 F.3d 754, 760 (D.C. Cir. 2014)). The instant case is extraordinary, and its ramifications far outweigh the merits of a single environmental review (see section 3, at 18). In *Ex parte Fahey* (*supra*), the Supreme Court observes that “Mandamus … against judges [is a] drastic and extraordinary remed[y]. We do not doubt power in a proper case to issue such writs … [but] [t]hese remedies should be resorted to only where appeal is a clearly inadequate remedy. We are unwilling to utilize them as substitutes for appeals.” (at 259-60). In this case, Petitioner’s appeal, too, proved inadequate a remedy. It was dismissed “because the district court’s November 10, 2022 minute order is not appealable” (22-5316, Doc. 1987197). The *Kellogg* court continues—“In keeping with that high standard, the Supreme Court in *Cheney* stated that three conditions must be satisfied before a court grants a writ of mandamus: (1) the mandamus petitioner must have “no other adequate means to attain the relief he desires,” (2) the mandamus petitioner must show that his right to the issuance of the writ is “clear and indisputable,” and (3) the court, “in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.” *Id.* at 380–81, 124 S.Ct. 2576” (citation removed) *In re Kellogg Brown & Root, Inc.*, *(supra)*. Here, this case satisfies all three conditions.

1. Petitioner has “no other adequate means to attain the relief ….”

This Mandamus Petition is the *only* remaining means to keep the case from

being moved three hundred miles away from witnesses in a (civil) fraud trial. Potential witnesses include officials from three federal agencies in Washington, D.C., and eight named individual defendants working in "two offices in the Washington, DC area[,]"[1] presently within an easily computable traveling distance to and from the courthouse.

The cumulative effect of the district court's prejudicial rulings (discussed above) was to frustrate Petitioner's case and deny him his rights to due process. The instrument used to obstruct this case was a Motion to Transfer based on improper facts (discussed below). The district court's abuse of discretion allowed the developer, SFW, to complete (unlawful) onshore construction. This case will be further prejudiced in the absence of immediate mandamus relief. Petitioner has waited over eight months for Federal Defendants to answer the complaint.

2. Petitioner has a "clear and indisputable" right to the issuance of the writ.

In *Kellogg*, *supra*, this Court "conclude[d] that the District Court's… ruling constitute[d] a clear legal error … the mandamus test is therefore satisfied" (at 762). In *Cheney v. U.S. Dist. Court for D.C* "only exceptional circumstances amounting to … a 'clear abuse of discretion,' *Bankers Life Casualty Co. v. Holland*, 346 U.S. 379, 383 (1953), 'will justify the invocation of this

[1] See "About BOEM Fact Sheet" (at 3, last sentence). Last accessed online at www.boem.gov on March 30, 2023— https://www.boem.gov/sites/default/files/documents/newsroom/fact-sheets/About_BOEM_3_23.pdf

extraordinary remedy,' *Will*, 389 U.S., at 95." 542 U.S. 367, 380 (2004)

Here, the district court erred in ruling to transfer the case: (a) "without any opportunity for hearing or argument of a complaint" *Fine v. McGuire*, 433 F.2d 499, 501 (D.C. Cir. 1970); (b) that relied on "improper factor[s]" in ordering the transfer" *In re Scott*, 709 F.2d 717, 718 (D.C. Cir. 1983); and (c) without considering the District of Columbia's Congressional designation and substantial expertise in FOIA cases. Moreover, the district court established a clear pattern of denying Petitioner his Constitutional right to due process.

2(a) Petitioner was denied the opportunity to present his case at a hearing

"[A] reasonable choice by plaintiff … cannot be overturned by the District Judge without giving plaintiff an opportunity to present facts that bear on convenience of the parties and witnesses, facts that would at least seem to involve the question what witnesses are in contemplation … in view of the nature of the action." *Fine v. McGuire*, 433 F.2d 499, 501-02 (D.C. Cir. 1970). It "is [an] error that requires prompt correction by this court" (*id.*, at 500). Petitioner respectfully seeks this Court to correct that error now.

On September 8, 2022, Federal Defendants filed a Motion to Transfer, to which Petitioner filed a timely Surreply (on October 11). Contrary to fact, Federal Defendants assert that Petitioner "was given ample opportunity to present his arguments in his opposition to the Bureau's transfer motion and in a surreply"

(Doc. 1991954, at 23), erroneously concluding that "[t]here was thus no need for the district court also to allow presentation of oral argument" (*id.*). In the intervening three weeks from when Petitioner filed his Surrepy (October 11) to the hearing on the Transfer Motion (November 9), Petitioner filed his First Amended Complaint (on November 2). Petitioner's First Amended Complaint includes new claims of fraud (s*ee* Exhibit 1, First Amended Complaint, claims thirteen through seventeen, at 111–141) and particularizes seven examples where BOEM and eight individuals working for BOEM knowingly falsified the ROD[2] and FEIS[3] (*id.*, FRAUD #1 through #7, at 3–10). During the November 9 Hearing, the district court did *not* allow Petitioner to develop arguments, present new fraud claims, or address the need to call eight newly named individual defendants (witnesses). Such issues would have affected the decision to transfer the case.

The district court neither considered nor allowed Petitioner to address Federal Defendants' deficient environmental review. This complaint asks why BOEM: fraudulently represented groundwater quality as "good[,]" and concealed harmful *onsite* PFAS contamination; materially misstated the project's socioeconomic impact by excluding the largest financial item (the cost of $2 billion); falsely stated

[2] *See* Record of Decision (ROD) approving South Fork Wind, issued November 24, 2021. Available online at the following link—
https://www.boem.gov/renewable-energy/state-activities/south-fork
[3] *See* South Fork Wind Final Environmental Impact Statement (FEIS) dated August 16, 2021 (at H-23, PDF 655). Available online at—
https://www.boem.gov/renewable-energy/state-activities/south-fork

population-level effects on Atlantic Cod; left out a viable alternative (Sunrise Wind) that intervenors *did* discuss during the state review; ignored procurement irregularities; and relied on an inaccurate purpose and needs statement? (*Id.*) This case involves more than mere procedural mistakes reviewable under the APA. Federal Defendants *and* SFW acknowledged receiving detailed information on these issues (above) but failed to address them. Instead, they falsified the review to cover up the project's failings. This case alleges fraud.

Federal Defendants assert that the district court "issued a well-reasoned opinion in which it thoughtfully weighed the relevant factors" (Fed. Defs. Resp. in Opp., Doc. 1991954, at 11, PDF 17). As Federal Defendants observe, the district court issued its Opinion *after* the hearing *because* it was *not* discussed *during* the hearing. There was *no* hearing on the Transfer Motion where Petitioner was permitted to speak on new information introduced in his First Amended Complaint. The district court limited the scope of its Opinion to "various deficiencies under the APA" and did *not* consider or even mention "fraud" (Exhibit 4, Opinion, 22-cv-02147, ECF 48, at 3).

In the matter of *In re Scott*, this Court noted that "there are limits to the broad discretion accorded courts under section 1404(a) … [that] requires the court to determine that transfer is necessary for the convenience of the parties and witnesses" (internal quotes removed) (709 F.2d 717, 720 (D.C. Cir. 1983). Here,

the district court exceeded those limits by transferring the case as far away as possible from three defendant federal agencies, eight individual defendants, witnesses, and where *all* the claims arose: "in the Washington, DC, area."[4]

2(b) The District Court Relied on improper factors

"[T]he most convenient forum is frequently the place where the cause of action arose" (*Van Dusen v. Barrack*, 376 U.S. 612, 628 (1964)). However, in opposition to the facts, Federal Defendants assert that Petitioner "relies *exclusively* on the APA for his right of action, and *all* his claims will be reviewed on the administrative record [emphasis added]" (Fed. Defs. Opp., Doc. 1991954, at 20, PDF 26, footnote 3). On the contrary, the cause of action giving rise to Petitioner's claims he introduced in his First Amended Complaint is (civil) fraud, *not* the APA (see claims on page 5). Federal Defendants, dismissing the fraud allegations, asserting that Petitioner "disagrees with the depth of the Environmental Impact Statement's analysis of groundwater contamination" (*id.*, at 22, PDF 28), but there is *no analysis*, discussion, mitigation plans, or assessment of alternatives to avoid a highly contaminated area. The final EIS mentions "perfluorinated compounds" only once *somewhere else* "on a fourth site, NYSDEC #152250," referring to East Hampton Airport (a 610-acre site) (*see* Exhibit 12, *excerpt,* FEIS, page 655 of 1,317). The

[4] See "About BOEM Fact Sheet" (at 3, last sentence). Last accessed online at www.boem.gov on March 30, 2023— https://www.boem.gov/sites/default/files/documents/newsroom/fact-sheets/About_BOEM_3_23.pdf

FEIS (falsely) states that all "four NYSDEC Environmental Remediation Sites are mapped near the interconnection facility" (*id.*). However, the fourth site, East Hampton Airport, is two miles from the interconnection facility (*see* Exhibit 12). Federal Defendants also misquote the FEIS to alter its meaning (by joining two sentences together)— " '[s]ampling at the fourth site . . . has indicated the presence of perfluorinated compounds' and that '[s]ite-related compounds have been identified in soil and groundwater within and around the site.' " (Fed. Defs. Opp., at 22, PDF 28). The FEIS neither specifies around which site the "site-related compounds have been identified[,]" nor identifies the "site-related compounds" (they could be safe naturally-occurring compounds such as calcium or sodium). Federal Defendants fail to explain how BOEM arrived at the (false) conclusion that "existing groundwater quality in the analysis area appears to be good" (*id.*).

Federal Defendants' claim that "[t]here is … no basis to infer fraud or bad faith on the part of the Bureau" (*id.*, at p. 27) is undermined by its refusal to answer the complaint. If Petitioner's allegations of fraud are so outrageous, Federal Defendants would have responded to the complaint and denied the claims. . But with the district court's assistance, they have avoided filing answers for over eight months in the hope that SFW will complete its project before having to do so. Tellingly, Federal Defendant's Response is the first time they have addressed issues concerning fraud because it was *not* discussed at the district court, during

the November 9 Hearing, or in motion papers. "We have concluded, however, that the District Court ignored certain considerations which might well have been more clearly appraised and might have been considered controlling" (*Van Dusen v. Barrack (supra)*, at 646) "*Reversed and remanded.*"

The district court ignored the inconvenience, additional expense, extra time, etc., that transferring the case three hundred miles from where all the parties and witnesses are located, in the Washington, D.C., area, would cause. "Section 1404(a) provides for transfer to a more convenient forum, not to a forum likely to prove equally convenient or inconvenient." *Van Dusen v. Barrack*, 376 U.S. 612, 645-46 (1964).

2(c) The district court failed to consider D.C. designation in FOIA cases

One of the claims concerns a FOIA request. The "'special venue' statute, … 5 U.S.C. § 552(a)(4)(B) … makes the District of Columbia available as an alternative forum for FOIA plaintiffs without regard to other factors which usually determine venue." *See Belgiovine Enter. v. City Fed. Sav. Bank*, 748 F. Supp. 33, 35 (D.D.C. 1990). The district court did *not* consider the District of Columbia's "special venue" designation for FOIA when ruling to transfer the case to the EDNY.

3. "[T]he writ is appropriate under the circumstances."

"This brings us to the third prong of the *Cheney* standard, which asks if the Court, 'in the exercise of its discretion, [is] satisfied' that issuance of the writ 'is appropriate under the circumstances.' 542 U.S. at 381, 124 S.Ct. 2576.

We stand at the brink of the largest construction program in U.S. history in largely undeveloped environments on the Outer Continental Shelf. As of March 2023, BOEM had auctioned 2.8 million acres of lease area off the U.S. coastline to offshore wind developers (*see* Exhibit 5, at 2). There are plans to build more than 3,024 wind turbines up to 1,171 feet high (taller than the Chrysler Building) with over 12,096 foundation piles that may penetrate 295 feet into the seabed. (*see* Exhibit 6, *excerpts,* Mayflower DEIS, Vol. II, Tables C & D). By 2024, BOEM plans to auction an additional 7.1 million acres (*see* Exhibit 5, at 2). Including potential call areas for which BOEM has issued a Call for Information and Nominations (Oregon and the Gulf of Mexico), BOEM could potentially lease up to 45.3 million acres (*id.*). The twelve largest U.S. National Parks combined are 45.8 million acres (*see* Exhibit 7). Any departure from the high standards of excellence that the nation expects of its Federal Agencies overseeing such an ambitious build-out of the U.S. coastline could be disastrous.

For example, the BP Deepwater Horizon Disaster, Report to the President (2011) reads— "With regard to NEPA specifically, some MMS [BOEM's predecessor]

managers reportedly 'changed or minimized the … scientists' potential environmental impact findings in [NEPA] documents to expedite plan approvals.' According to several MMS environmental scientists, 'their managers believed the result of NEPA evaluations should always be a 'green light' to proceed.'" *See* Exhibit 8*, excerpts*, at PDF 14). "It should be no surprise under such circumstances that a culture of complacency with regard to NEPA developed" (*id.*).

The three people overseeing the development of up to 45.3 million acres off the U.S. coastline all worked for a major law firm advising the offshore wind industry, Latham & Watkins LLP. The current U.S. Deputy Secretary of the Interior, Tommy Beaudreau, was a partner in the Washington, D.C. office of Latham & Watkins (2017–2021). The Nominee Report for Mr. Beaudreau lists "DE Shaw Renewable Investments" as a source of compensation. DE Shaw Renewable Investments owned South Fork Wind LLC (formerly Deepwater Wind South Fork LLC) before selling it to Ørsted A/S, another offshore wind developer from which Mr. Beaudreau received compensation. Mr. Beaudreau's Nominee Report lists a Latham & Watkins income of $2.4 million and identifies the following offshore wind companies— Ørsted A/S, Avangrid Renewables, Vineyard Wind LLC, Beacon Offshore Energy, TOTAL, innogy Renewables US, Dominion Resources, Inc., DE Shaw Renewable Investments, and Anbaric Development Partners. *See* Exhibit 9, OGE Nominee Report (2020).

The Principal Deputy Assistant Secretary for Land and Minerals Management (L&MM), Ms. Laura Daniel-Davis, who signed BOEM's Record of Decision for SFW, was a Senior Manager at Latham & Watkins (2001–2007). The Director of BOEM, Elizabeth (Liz) Klein, was an Associate at Latham & Watkins (2006–2010). Counsel representing SFW, Ms. Janice Schneider of Latham & Watkins, served as Assistant Secretary for L&MM (2014–2017), replacing outgoing assistant secretary Tommy Beaudreau, who went on to become a partner at Latham & Watkins.

This action alleges fraud by BOEM *against* the public interest. It should be a ready reminder of the critical importance of independent oversight lacking in the DOI (and BOEM).

Speaking to "*Cheney* 's third prong" in the case of *In re Clinton*, the court held that "[i]n light of the importance of the congressional aims … and in order to forestall future, similar errors by district courts that would hamper the achievement of those aims, we find that the totality of the circumstances counsels us to hold … that mandamus is appropriate under these circumstances." 973 F.3d 106, 118 (D.C. Cir. 2020) As I tried saying during the November 9 Hearing, "the public interest in keeping the integrity of the Court [is] at stake." Exhibit 10, Hearing Tr. 11/09/2022, at 23:16-17).

CONCLUSION

This case concerns more than the merits of a single environmental review; it shines a light on failed oversight of the most extensive development program in undeveloped environments in U.S. history. This case leaves us with an uncomfortable question, who does BOEM *really* represent?

For the above reasons, I respectfully request this Court: (1) order Respondents to answer the pleadings within fourteen (14) days; (2) reverse the trial court's order to transfer the case to the U.S. District Court for the Eastern District of New York (ECF 49); (3) remand; and (4) reassign.

Respectfully submitted this 10th day of April 2023,

Simon v. Kinsella, Petitioner *pro se*
P.O. Box 792, Wainscott, NY 11975
Tel: (631) 903-9154 | Si@oswSouthFork.Info

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2). The document contains 3,892 words, as determined by the word-count function of Microsoft Word.

This document complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because this document has been prepared in a proportionally spaced typeface (Times New Roman, 14-point font) using Microsoft Word.

Respectfully submitted on this 12th day of April 2023,

Simon v. Kinsella
Petitioner *pro se*
P.O. Box 792, Wainscott, NY 11975
Tel: (631) 903-915 | Si@oswSouthFork.Info