

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

PUBLIC HEALTH AND MEDICAL  
PROFESSIONALS FOR TRANSPARENCY

and

PATRICK AND STEPHANIE DE GARAY,

Plaintiffs,

v.

U.S. FOOD AND DRUG  
ADMINISTRATION,

Defendant.

Civil Action No. 4:22-cv-915-P

**ANSWER**

Defendant Food and Drug Administration (“FDA” or “Defendant”), by and through undersigned counsel, hereby answers the Complaint (Doc. 1) filed by Public Health and Medical Professionals for Transparency (“PHMPT”) and Patrick and Stephanie de Garay (together the “de Garays”), collectively “Plaintiffs.” All allegations not specifically admitted, denied, or otherwise responded to below are hereby denied. Moreover, to the extent that the Complaint refers to or quotes from external documents, statutes, or other sources, Defendant may refer to such materials for their accurate and complete contents; however, Defendant’s references are not intended to be, and should not be construed to be, an admission that the cited materials are: (a) correctly cited or quoted by Plaintiff; (b) relevant to this, or any other, action; or (c) admissible in this, or

any other, action. Defendant responds to the Complaint as follows in the correspondingly numbered paragraphs:

1. Defendant denies the allegations in paragraph 1 except that Defendant admits that FDA approved Moderna's COVID-19 vaccine, marketed as Spikevax, for use in individuals 18 years of age or older on January 31, 2022. This paragraph also contains a citation to an FDA press release, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the press release for a complete and accurate statement of its contents.

2. Defendant denies the allegations in paragraph 2 except that Defendant admits that FDA approved Pfizer-BioNTech's COVID-19 vaccine, marketed as Comirnaty, for use in individuals 12 to 15 years of age on July 8, 2022. This paragraph also contains a citation to an FDA press release, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the press release for a complete and accurate statement of its contents.

3. Paragraph 3 contains a quotation from an FDA press release, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the press release for a complete and accurate statement of its contents.

4. Paragraph 4 consists of a quotation from an FDA press release, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the press release for a complete and accurate statement of its contents.

5. Paragraph 5 consists of Plaintiffs' allegations about the opinions of unnamed individuals and organizations. Defendant lacks sufficient information to admit or deny the allegations in this paragraph.

6. Paragraph 6 consists of Plaintiffs' characterization of PHMPT and its work. Defendant lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in this paragraph.

7. Defendant denies the allegations in paragraph 7 except that Defendant admits that FDA is producing data and information related to the approval of Comirnaty for individuals 16 years of age or older to PHMPT under the Freedom of Information Act ("FOIA"), in accordance with an order from this Court. This paragraph also contains Plaintiffs' characterization of PHMPT and its work, and Defendant lacks sufficient knowledge or information to form a belief about the truth or falsity of those allegations. Additionally, this paragraph contains a link to an FDA webpage, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited webpage for a complete and accurate statement of its contents.

8. Paragraph 8 contains Plaintiffs' characterization of the purpose of PHMPT's FOIA request. Defendant lacks sufficient knowledge or information to form a belief about the truth or falsity of this allegation. Paragraph 8 also contains a quotation from a federal regulation, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited regulation for a complete and accurate statement of its contents.

9. Defendant denies the allegations in paragraph 9 except that Defendant admits that Plaintiff PHMPT submitted a FOIA request to FDA for expedited processing of “[a]ll data and information for the Moderna Vaccine enumerated in 21 C.F.R. § 601.51(e), with the exception of publicly available reports on the Vaccine Adverse Events Reporting System [‘VAERS’]” (citation omitted). Compl., Ex. 1. Defendant admits that Plaintiff PHMPT also submitted a FOIA request for expedited processing of “[a]ll data and information for the 12-15-Year-Old Pfizer Vaccine enumerated in 21 C.F.R. § 601.51(e), with the exception of publicly available reports on [VAERS]” and excluding “any data and information responsive to and being produced in FOIA Control # 2021-5683 (previously made on behalf of PHMPT)” (citation omitted). Compl., Ex. 5. This paragraph also cites a federal regulation, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to Plaintiff PHMPT’s FOIA requests in Exhibits 1 and 5, and the cited regulation, for complete and accurate statements of their contents.

10. Defendant denies the allegations in paragraph 10 except that Defendant admits that Plaintiffs de Garays submitted a FOIA request to FDA requesting “[a]ll data and information for the 12-15-Year-Old Pfizer Vaccine enumerated in 21 C.F.R. § 601.51(e) with the exception of publicly available reports on [VAERS]” (citation omitted). Compl., Ex. 7. The remaining allegations concern Plaintiff de Garays’ minor child. Defendant lacks sufficient knowledge or information to admit or deny these allegations. This paragraph also cites a news article, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to Plaintiff

de Garays' FOIA request in Exhibit 7 and the cited news article for complete and accurate statements of their contents.

11. Paragraph 11 consists of Plaintiffs' allegations regarding interest from the general public and the medical and scientific community in data and information related to approval of the COVID-19 vaccines, to which no response is required. To the extent a response is required, Defendant denies the allegations.

12. Paragraph 12 consists of Plaintiffs' allegations regarding the potential effect of releasing Plaintiffs' requested records, to which no response is required. To the extent a response is required, Defendant denies the allegations.

13. Paragraph 13 contains Plaintiffs' allegations regarding the need for production of Plaintiffs' requested records by unnamed segments of the public mandated to receive the vaccine and unnamed public and private policy makers who continue to change their vaccine policies, to which no response is required. To the extent a response is required, Defendant lacks sufficient knowledge or information to admit or deny these allegations.

14. Paragraph 14 describes the interests of unnamed third-parties—including legislators, policy makers, and parents—in the requested information and the potential effects of delaying their release. Defendant lacks sufficient information to admit or deny these allegations.

15. Defendant denies the allegations in paragraph 15 except that Defendant admits that Plaintiffs have requested expedited processing of their FOIA requests pursuant to 5 U.S.C. § 552(a)(6)(E)(v)(II). Defendant has insufficient information to

admit or deny the remainder of Plaintiffs' allegations regarding their reasons for requesting expedited processing and intentions with respect to disseminating the requested materials.

16. Defendant denies the allegations in paragraph 16 except that Defendant admits that FDA denied Plaintiff PHMPT's request for expedited processing of its FOIA request related to Spikevax records on March 7, 2022, that Plaintiff PHMPT appealed the denial on June 1, 2022, and that Defendant did not respond to the appeal prior to the commencement of this action. To the extent Plaintiff alleges that the appeal remains pending, that allegation is denied. Defendant avers that appeals for requests in litigation are considered closed due to the change in jurisdiction from the agency to the federal court.

17. Admitted.

18. Admitted.

19. Paragraph 19 contains Plaintiffs' characterization of their claims in this case, to which no response is required.

20. Paragraph 20 consists of Plaintiffs' description of PHMPT, to which no response is required. To the extent a response is required, Defendant lacks sufficient knowledge or information to admit or deny these allegations.

21. Paragraph 21 consists of Plaintiffs' characterization of PHMPT's membership. Defendant has insufficient information to admit or deny the allegations in this paragraph.

22. Paragraph 22 consists of a statement by Plaintiffs about the de Garays' residency and adverse events suffered by their fourteen-year-old child following vaccination in Pfizer's clinical trial for 12- to 15-year-olds. Defendant lacks sufficient knowledge or information to admit or deny these allegations.

23. Defendant denies the allegations in paragraph 23 except that Defendant admits the allegations in the first sentence. The second sentence consists of Plaintiff's legal conclusion, to which no response is required.

24. Paragraph 24 consists of Plaintiffs' legal conclusions regarding jurisdiction and venue, to which no response is required.

25. Paragraph 25 contains legal conclusions regarding FDA's licensure of vaccines, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited statute and regulation for complete and accurate statements of their contents. This paragraph also contains citations to various webpages on FDA's website, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited webpages for complete and accurate statements of their contents.

26. Paragraph 26 contains allegations regarding Pfizer and Moderna's motives and work on COVID-19 vaccines, to which no response is required. To the extent this paragraph alleges that Pfizer and Moderna submitted information about clinical trials for their COVID-19 vaccines to FDA in their Biologic License Applications ("BLAs"), Defendant admits that allegation.

27. Admitted.

28. Admitted.

29. Paragraph 29 contains a characterization of the public's interest in the documents produced in Plaintiff PHMPT's separate FOIA case and the number of downloads of those documents from Plaintiff PHMPT's website. The Defendant lacks sufficient knowledge or information to admit or deny these allegations.

30. Paragraph 30 contains an allegation regarding what independent experts and researchers intend to do or will do with the produced materials. Defendant lacks sufficient knowledge or information to admit or deny the allegation.

31. Paragraph 31 contains allegations regarding Pfizer's work on clinical trials for its COVID-19 vaccine, to which no response is required.

32. Defendant denies the second sentence of this paragraph. Defendant avers that 1,119 adolescents 12 through 15 years of age received the study drug and were analyzed for efficacy in Pfizer's pivotal study of the vaccine in this age group, and that many more adolescents received the vaccine both before and after licensure. *See* Comirnaty Prescribing Information, § 14.2, *available at* <https://www.fda.gov/media/151707/download>. The remainder of paragraph 32 contains allegations regarding the personal experiences of the de Garays and their minor child during and after Pfizer's clinical trials, as described in an online video, to which no response is required. To the extent a response is required, Defendant lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in this paragraph. Defendant respectfully refers the Court to the cited video link and affidavit



(attached as Exhibit 7 to the Complaint) for complete and accurate statements of their contents.

33. Defendant denies the allegations in paragraph 33 except that Defendant admits that FDA granted emergency use authorization and subsequently licensed the use of the 12-15-Year-Old Pfizer Vaccine on July 8, 2022. Defendant respectfully refers the Court to the cited FDA press release for a complete and accurate statement of its contents. All other allegations in Paragraph 33 are denied.

34. Admitted. Defendant respectfully refers the Court to the cited FDA press release for a complete and accurate statement of its contents.

35. Paragraph 35 cites selected portions of a federal regulation, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited regulation for a complete and accurate statement of its contents.

36. Paragraph 36 consists of Plaintiffs' unspecified allegations regarding an "ongoing, national public debate" about the adequacy of information relied upon for licensure of the COVID-19 vaccine, to which no response is required.

37. Paragraph 37 contains allegations regarding declarations from unnamed individuals that the information underlying licensure of Spikevax is "more than sufficient." Defendant lacks sufficient knowledge or information to admit or deny these allegations.

38. Paragraph 38 consists of quotations from two FDA press releases regarding the approval of the Moderna COVID-19 vaccine, to which no response is required. To

the extent a response is required, Defendant respectfully refers the Court to the cited press releases for complete and accurate statements of their contents.

39. Paragraph 39 provides citations to several government websites, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited websites for complete and accurate statements of their contents.

40. Paragraph 40 provides citations to an FDA press release and to a Center for Disease Control's ("CDC") website link, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited press release and website for complete and accurate statements of their contents.

41. Paragraph 41 consists of Plaintiffs' allegations about the opinions of unnamed individuals and organizations. Defendant lacks sufficient knowledge or information to admit or deny the allegations in this paragraph.

42. Paragraph 42 contains quotations from and citations to several website links from third parties and a link to a Citizen Petition filed by individual members of Plaintiff PHMPT, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited websites for complete and accurate statements of their contents. To the extent that Plaintiffs allege that a group of 27 individuals filed a Citizen Petition on June 1, 2021 related to COVID-19 vaccines, Defendant admits the allegation and avers that petitioners withdrew their petition on July 23, 2021. *See* Withdrawal Letter from Linda Wastila, July 23, 2021, docket no. FDA-

2021-P-0521-1560, *available at* <https://www.regulations.gov/document/FDA-2021-P-0521-1560>.

43. Paragraph 43 contains Plaintiffs' quotation from and citation to a statement posted on a self-publication website, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited webpage for a complete and accurate statement of its contents. Defendant denies that the referenced paper has been published.

44. Paragraph 44, and its subparagraphs a-e, consists of Plaintiffs' characterization of five papers, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited papers for complete and accurate statements of their contents.

45. Paragraph 45, and its subparagraphs a-e, consists of Plaintiffs' characterization of five papers, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited papers for complete and accurate statements of their contents.

46. Paragraph 46 contains Plaintiffs' characterizations of the exigency regarding COVID-19 vaccines and invasiveness of policy decisions, to which no response is required. This paragraph also contains several citations to website links, largely from 2021, regarding vaccine mandates enacted by institutions other than Defendant, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited websites for complete and accurate statements of their contents.

47. Defendant has insufficient information to admit or deny what vaccine policies might be adopted by educational institutions prospectively. This allegation also contains citations to various webpages, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited webpages. Paragraph 47 also contains allegations about a vaccine mandate announced in Washington D.C., to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited news article for a complete and accurate statement of its contents.

48. Defendant has insufficient information to admit or deny the first sentence of Paragraph 48. Defendant admits that PHMPT submitted a FOIA request on February 23, 2022, and that the request sought expedited handling. The remainder of the paragraph sets forth a selected portion of the FOIA request, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to Exhibit 1 of the Complaint for a complete and accurate statement of the contents of the FOIA request.

49. Defendant denies the allegations in paragraph 49 except that Defendant admits that FDA denied Plaintiff PHMPT's request for expedited processing on March 7, 2022. The remainder of Paragraph 49 sets forth a selected portion of FDA's correspondence regarding the FOIA request, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to Exhibit 2 of the Complaint for a complete and accurate statement of the contents of the correspondence.

50. Admitted.

51. Admitted.

52. Paragraph 52 contains a legal conclusion, to which no response is required.

Defendant admits that it did not respond to PHMPT's FOIA appeal prior to the commencement of this action. To the extent Plaintiffs allege that FDA's determination of PHMPT's FOIA appeal remains pending, that allegation is denied.

53. To the extent Plaintiffs characterize PHMPT's mission and efforts in this matter, Defendant has insufficient information to admit or deny the allegations.

Defendant admits that PHMPT submitted the FOIA request quoted in Paragraph 53 on August 8, 2022, and that the request sought expedited processing. This paragraph also cites to FDA's website, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited website for a complete and accurate statement of its contents. The remainder of the paragraph sets forth a selected portion of the FOIA request, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to Exhibit 5 of the Complaint for a complete and accurate statement of the contents of the FOIA request.

54. Defendant denies the allegations in paragraph 54 except that Defendant admits that FDA denied Plaintiff PHMPT's request for expedited processing on August 15, 2022. The remainder of Paragraph 54 sets forth a selected portion of FDA's correspondence regarding the FOIA request, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to Exhibit 6 of the Complaint for a complete and accurate statement of the contents of the correspondence.

55. Defendant denies the allegations in paragraph 55 except that Defendant admits that Plaintiff de Garays submitted the quoted FOIA request to FDA on August 22, 2022, which sought expedited processing. Defendant has insufficient information to admit or deny the assertion in paragraph 55 regarding Plaintiffs' reasons for submitting a FOIA request. This paragraph also cites FDA's website, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited website for a complete and accurate statement of its contents. The remainder of the paragraph sets forth a selected portion of the FOIA request, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to Exhibit 7 of the Complaint for a complete and accurate statement of the contents of the FOIA request.

56. Defendant denies the allegations in paragraph 56 except that Defendant admits that FDA denied Plaintiff de Garays' request for expedited processing on August 29, 2022. The remainder of Paragraph 56 sets forth a selected portion of FDA's correspondence regarding the FOIA request, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to Exhibit 8 of the Complaint for a complete and accurate statement of the contents of the correspondence.

57. Paragraph 57 consists of legal conclusions and quotations from the FOIA, to which no response is required. The allegations in this paragraph also purport to characterize a statute, which speaks for itself. To the extent a response is required, Defendant respectfully refers the Court to the FOIA, 5 U.S.C. § 552, for a complete and accurate statement of its contents.

58. Paragraph 58 consists of legal conclusions, quotations from the FOIA, and a case citation, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the FOIA, 5 U.S.C. § 552, and to the case citation for a complete and accurate statement of their contents.

59. Paragraph 59 consists of legal conclusions, to which no response is required.

60. Paragraph 60 consists of a legal conclusion, to which no response is required.

61. Paragraph 61 consists of a legal argument, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to Exhibits 4, 6, and 8 of the Complaint for complete and accurate statements of the contents of FDA's correspondence denying expedited processing.

62. Paragraph 62 consists of Plaintiffs' characterization of PHMPT and its work. Defendant lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations. This paragraph also cites to various webpages, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited webpages for full and accurate statements of their contents.

63. Paragraph 63 consists of Plaintiffs' characterization of the de Garays as public advocates, and various appearances they have made in that capacity, to which no response is required. This paragraph also contains several website links to media appearances made by the de Garays, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited website links for

a complete and accurate statement of their contents. Defendant lacks knowledge or information sufficient to form a belief about the truth or falsity of the remaining allegations in this paragraph regarding the de Garays' minor child.

64. Paragraph 64 consists of a legal conclusion, to which no response is required.

65. Paragraph 65 quotes selected portions of federal regulations and sets forth a legal conclusion, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited regulations for complete and accurate statements of their contents.

66. Paragraph 66 cites selected portions of a federal statute, regulations, and FDA webpages, and sets forth legal conclusions, to which no responses are required. To the extent a response is required, Defendant respectfully refers the Court to the cited statute, regulations, and webpages for complete and accurate statements of their contents.

67. Paragraph 67 consists of a legal conclusion, to which no response is required.

68. Paragraph 68 characterizes Plaintiffs' previous allegations and cited materials in Paragraphs 36-45, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to Defendant's responses to Paragraphs 36-45, and to the cited materials for complete and accurate statements of their contents.

69. Paragraph 69 restates Plaintiffs' previous allegations about a public debate regarding the COVID-19 vaccines among unnamed individuals, to which no response is



required. To the extent a response is required, Defendant lacks sufficient knowledge or information to admit or deny these allegations.

70. Paragraph 70 contains Plaintiffs' speculations about what information will settle public discourse about the safety and efficacy of COVID-19 vaccines, to which no response is required

71. Paragraph 71 consists of a legal conclusion, to which no response is required. To the extent that Plaintiffs allege that the COVID-19 vaccines referenced in the FOIA requests that are the subject of this action continue to be mandated by entities other than Defendant, Defendant lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegation.

72. Paragraph 72 contains an allegation regarding the Pentagon's continued mandate of COVID-19 vaccines based on news articles, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited news articles for complete and accurate statements of their contents, and additionally avers that on December 23, 2022, the President signed into law the National Defense Authorization Act for Fiscal Year 2023 (NDAA), which directs the Secretary of Defense to rescind the military's COVID-19 vaccination requirement within 30 days of enactment. *See* James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, 117th Cong. § 525 (2022).

73. Paragraph 73 contains Plaintiffs' allegations regarding the relevancy of the requested records for the United States Military and the refusal of service members to receive the COVID-19 vaccines. Defendant lacks sufficient knowledge or information to

admit or deny these allegations. This paragraph also cites to a news article, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited news article for a complete and accurate statement of its contents.

74. Paragraph 74 contains Plaintiffs' allegations about recent U.S. Army policies regarding unvaccinated service members. Defendant lacks sufficient knowledge or information to admit or deny this allegation. This paragraph also cites to a news article, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited news article for a complete and accurate statement of its contents and also avers that the NDAA requires the military's COVID-19 vaccination requirement to be rescinded within 30 days of NDAA's enactment. *See supra* ¶ 72.

75. Paragraph 75 contains Plaintiffs' allegations regarding military recruitment. Defendant lacks sufficient knowledge or information to admit or deny these allegations. This paragraph also cites to several news articles, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited news articles for complete and accurate statements of their contents.

76. Paragraph 76 contains Plaintiffs' allegation regarding unnamed policy makers' review of COVID-19 vaccine requirements for students in the 2022-2023 school year. Defendant lacks sufficient knowledge or information to admit or deny this allegation.

77. Paragraph 77 consists of Plaintiffs' opinion regarding the usefulness of its FOIA requests for the public, to which no response is required.

78. Paragraph 78 consists of allegations regarding unspecified objections to the COVID-19 vaccines and unnamed individuals expelled from various institutions. Defendant lacks sufficient knowledge or information to admit or deny these allegations. This paragraph also consists of a legal conclusion about the urgency of Plaintiffs' request, to which no response is required.

79. Paragraph 79 contains legal conclusions and citations to federal regulations, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited regulations and exhibits for complete and accurate statements of their contents.

80. Paragraph 80 consists of Plaintiffs' description and characterization of the public interest in the requested materials based on activity on PHMPT's website. Defendant lacks knowledge or information sufficient to form a belief about the truth or falsity of these allegations.

81. Paragraph 81 consists of a legal conclusion, to which no response is required.

The remaining paragraph of the Complaint contains Plaintiffs' requested relief, to which no response is required. To the extent a response is required, Defendant denies that Plaintiffs are entitled to any relief.

### **AFFIRMATIVE DEFENSES**

1. Some or all of the requested documents and information are exempt from disclosure. 5 U.S.C. § 552(b).

2. Plaintiff's FOIA request is improper and unduly burdensome to the extent it does not reasonably describe the records sought as required by 5 U.S.C. § 552(a)(3)(A).
3. Defendant is entitled to invoke all exemptions under the FOIA and any other applicable laws.
4. To the extent Plaintiff's complaint seeks documents or information that were not asserted in their original FOIA request, such matters are barred as unexhausted.
5. Plaintiffs are not entitled to attorneys' fees or costs.

Dated: January 6, 2023.

Respectfully submitted,

LEIGHA SIMONTON  
United States Attorney

*/s/ Clay Mahaffey*  
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ATTORNEYS FOR DEFENDANT

**CERTIFICATE OF SERVICE**

I hereby certify that on January 6, 2023, I electronically filed the foregoing document with the Clerk of the Court for the U.S. District Court, Northern District of Texas, using the Electronic Case Filing System of the Court. I hereby certify that I have served all counsel and parties of record electronically or by another manner authorized by Federal Rule of Procedure 5(b)(2).

/s/ Clay R. Mahaffey  
Clay R. Mahaffey  
Assistant United States Attorney