UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

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| ANGELA DELORME-GAINES,<br><br>Plaintiff,<br><br>v.<br><br>TARA SWEENEY, Asst. Secretary of Interior, US Bureau of Indian Affairs, et al.,<br><br>Defendants. | Case No. 1:20-cv-00081<br><br>**BUREAU OF INDIAN AFFAIRS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PETITION FOR WRIT OF MANDAMUS** |

The United States of America by Drew H. Wrigley, United States Attorney for the District of North Dakota, and James Patrick Thomas, Assistant United States Attorney, on behalf of the Bureau of Indian Affairs ("BIA") submits this memorandum in support of Bureau of Indian Affairs' Motion to Dismiss Petition for Writ of Mandamus.

## INTRODUCTION

In a letter dated April 8, 2019 Angela Delorme-Gaines ("Plaintiff") requested BIA place a lien against the Individual Indian Money ("IIM") account of Thomas Joseph Fox ("Fox") based on an Order and Judgment, dated August 21, 2018, issued by the Turtle Mountain Tribal Court in favor of Plaintiff.[1] See Doc. 7-4, Letter from Angela Delorme to Kayla Danks, dated April 8, 2019; Doc. 7-1, Turtle Mountain Tribal Court Notice of Entry of Judgment/Order dated August 21, 2018. Dissatisfied with the progress on her request, on August 10, 2020 Plaintiff filed Petition for Writ of Mandamus ("Petition") seeking to compel BIA "to suspend the applicable

[1] An IIM account is an interest-bearing account for trust funds held under the control and management of the Secretary of the Interior ("Secretary"), belonging to a beneficiary who has an interest in trust assets. 25 C.F.R. § 115.002. In general, the account holder has a right to withdraw funds from their account. 25 C.F.R. § 115.101. To encumber an IIM account means the Secretary approves a claim, lien, or charge against the trust assets in the account and some portion of those funds become obligated to a third party. 25 C.F.R. § 115.002.

IIM account then issue an Encumbrance and/or Disbursement Plan to the [Office of the Special Trustee ("OST")] Processing Center in accordance with BIA Federal Regulation 25 CFR § 115.601(b)(3)." Doc. 7 at 6.[2] Plaintiff seeks affirmative injunctive relief under the Administrative Procedure Act, 5 U.S.C. § 701, et seq., and the mandamus statute, 28 U.S.C. § 1361.[3] Doc. 7 at 6.

On October 16, 2020 Plaintiff filed an additional document entitled "Response and Update." Doc. 13.[4]

[2] The Petition names individuals employed by the Department of the Interior and/or BIA—Tara Sweeney, James D. James, Daryl LaCounte, Timothy LaPointe, and Kayla Danks—as defendants in their official capacity: "the defendants are federal officials failing to fulfill their official duties in a reasonable period of time thereby violating the APA. Petitioner is filing in federal court because this matter involves a federal question regarding federal officials working in their official capacity for a federal sub agency, the US Bureau of Indian Affairs." Doc. 7 at 1.

[3] For purposes of compelling agency action that has been unreasonably withheld, courts consider 5 U.S.C. § 706(1) and the mandamus statute, 28 U.S.C. § 1361, to be coextensive. See, e.g., Sharadanant v. U.S. Citizenship & Immigration Servs., 543 F.Supp.2d 1071, 1075 (D.N.D. 2008); Independence Mining Co. v. Babbitt, 105 F.3d 502, 507 (9th Cir. 1997)(relief under mandamus statute and under the APA under § 706(1) "is essentially the same"); Hernandez-Avalos v. INS, 50 F.3d 842, 845 (10th Cir. 1995)("[a] mandatory injunction [issued under the APA] is essentially in the nature of mandamus").

[4] The filing does not actually respond to anything filed by BIA. Instead, it makes additional factual allegations, advances unsupported legal arguments, and calls for the Court to order non-APA remedies such as Court-ordered revisions to federal agency regulations and a federal investigation of the Fort Berthold Agency. These issues are not properly before the Court. A pro se litigant must comply with substantive and procedural law. Burgs v. Sissel, 745 F.2d 526, 528 (8th Cir. 1984)(citing Faretta v. California, 422 U.S. 806, 834-35 n.46 (1975)). Moreover, pro se Plaintiff is an attorney licensed to practice law in New Mexico, and is not entitled to have her filings liberally construed or adherence to the rules relaxed. Doc. 7-1 at 5. "'[P]ro se attorneys typically cannot claim the special consideration which the courts customarily grant to pro se parties.' Holtz v. Rockefeller & Co., Inc., 258 F.3d 62, 82 n.4 (2d Cir.2001); U.S. v. Yousef, 327 F.3d 56, 131 (2d Cir.2001); Harbulak v. County of Suffolk, 654 F.2d 194, 198 (2d Cir.1981) (same)." Wein v. Thompson, Inc., Civil Action No. 04-cv-2199(PGS), 2006 WL 2465220, at *2 (D.N.J. Aug. 23, 2006).

## PROCEDURAL HISTORY

On March 31, 2020 an administrative restriction was placed on Fox's IIM account, in response to Plaintiff's April 8, 2019 request. On September 16, 2020, consistent with the trust duties of the United States, BIA Fort Berthold Agency Superintendent Kayla Danks ("Danks") conducted a 25 C.F.R. § 115.607 telephonic hearing with Fox pursuant to his request as an IIM account holder to challenge the restriction on his account. Declaration of Kayla Danks in Support of Bureau of Indian Affairs' Motion to Dismiss Petition for Writ of Mandamus ("Danks Decl. II") at ¶4, filed herewith.

On September 30, 2020 Danks issued a decision under 25 C.F.R. § 115.615 to Fox, lifting the restriction on his IIM account. The decision included a statement of administrative appeal rights pursuant to 25 C.F.R. § 2.7(c). As of the date of the declaration, Fox had not pursued his administrative appeal rights. See Danks Decl. II at ¶5, **Ex. 1**, Letter from Kayla Danks to El Marie Conklin, dated September 30, 2020.

On October 21, 2020 Danks issued a decision to Plaintiff denying her April 8, 2019 request that BIA place a lien against Fox's IIM account. The decision issued to Plaintiff included a statement of administrative appeal rights pursuant to 25 C.F.R. § 2.7(c). As of the date of the declaration, Plaintiff had not pursued her appeal rights. See Danks Decl. II at ¶6, **Ex. 2**, Letter from Kayla Danks to Angela Delorme-Gaines, with enclosure, dated October 21, 2020 ("Delorme-Gaines Decision").

## LEGAL STANDARD

### Federal Rule of Civil Procedure 12(b)(1)
### Lack of Subject-Matter Jurisdiction

As a threshold matter, a court must satisfy itself that subject-matter jurisdiction–the Court's very power to hear the case–exists. When a federal court concludes it lacks subject-

matter jurisdiction with respect to a claim, the court must dismiss that claim. Arbaugh v. Y&H Corp., 546 U.S. 500, 514 (2006). The burden to establish jurisdiction lies with the plaintiff. North Dakota ex rel. Stenehjem v. United States, 257 F. Supp. 3d 1039, 1050 (D.N.D. 2017)(citing Spirit Lake Tribe v. North Dakota, 262 F.3d 732, 744 (8th Cir. 2001)).

> In evaluating a 12(b)(1) motion to dismiss for lack of subject matter jurisdiction, "no presumptive truthfulness attaches to the plaintiff's allegations, and the existence of [~~un~~]disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." Mentz [v. United States, 359 F. Supp. 2d 856, 858 (D.N.D. 2005)](quoting Osborn [v. United States, 918 F.2d 724, 730 (8th Cir. 1990)]). A court may make credibility determinations and weigh conflicting evidence in resolving a motion to dismiss under Rule 12(b)(1). See T.L. ex rel. Ingram v. United States, 443 F.3d 956, 961 (8th Cir. 2006); see also Mentz, 359 F. Supp. 2d at 858. The party seeking to establish federal jurisdiction has the burden of proving that jurisdiction does in fact exist, and "this burden may not be shifted to" the other party. Great Rivers Habitat Alliance v. Fed. Emergency Mgmt. Agency, 2010 WL 3168368, 2 (8th Cir. 2010)(quoting Newhard, Cook & Co. v. Inspired Life Ctrs, 895 F.2d 1226, 1228 (8th Cir. 1990)); Mentz, 359 F. Supp. 2d at 858 (citing Osborn v. United States, 918 F.2d 724, 729 (8th Cir. 1990)).

Vinje v. United States, Case No. 1:16-cv-024-CSM, 2016 WL 3248238, at *1–2 (D.N.D. June 10, 2016)(correcting quote from Osborn).

"A district court has the authority to dismiss an action for lack of subject matter jurisdiction on any one of three separate bases: '(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts.'" Johnson v. United States, 534 F.3d 958, 962 (8th Cir. 2008)(quoting Williamson v. Tucker, 645 F.2d 404, 413 (5th Cir. 1981)). Because "there is no statutory procedure upon an issue of jurisdiction, the mode of its determination is left to the trial court." Land v. Dollar, 330 U.S. 731, 735 n.4 (1947)(quoting Gibbs v. Buck, 307 U.S. 66, 71 (1939)). "The district court has the authority to consider matters outside the pleadings on a motion challenging subject matter jurisdiction under Federal Rule of

Civil Procedure 12(b)(1)." Deuser v. Vecera, 139 F.3d 1190, 1191, n.3 (8th Cir. 1998)(citation omitted).

**Federal Rule of Civil Procedure 12(b)(6)**
**Failure to State a Claim Upon Which Relief Can be Granted**

A complaint must be dismissed for failure to state a claim if the plaintiff can prove no set of facts in support of his claim which would entitle him to the relief requested. Coleman v. Watt, 40 F.3d 255, 258 (8th Cir. 1994). When considering a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the complaint should be construed in a light most favorable to the plaintiff, and the material allegations in the complaint are taken as true. Id. "The complaint must allege facts, which, when taken as true, raise more than a speculative right to relief." Benton v. Merrill Lynch & Co., 524 F.3d 866, 870 (8th Cir. 2008)(citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). See also Ashcroft v. Iqbal, 556 U.S. 662, 678 (complaint must contain sufficient factual matter to state a claim to relief that is plausible on its face). "[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. (citations omitted).

"[I]n considering a motion to dismiss, the district court may sometimes consider materials outside the pleadings, such as materials that are necessarily embraced by the pleadings and exhibits attached to the complaint." Mattes v. ABC Plastics, Inc., 323 F.3d 695, 697 n.4 (8th Cir. 2003)(citing Porous Media Corp. v. Pall Corp., 186 F.3d 1077, 1079 (8th Cir. 1999)). "In this circuit, Rule 12(b)(6) motions are not automatically converted into motions for summary judgment simply because one party submits additional matters in support of or opposition to the motion. Some materials that are part of the public record or do not contradict the complaint may

be considered by a court in deciding a Rule 12(b)(6) motion to dismiss." Missouri ex rel. Nixon v. Coeur D'Alene Tribe, 164 F.3d 1102, 1107 (8th Cir.) cert. denied 537 U.S. 1039 (1999).

## ARGUMENT

### I. THE COURT LACKS SUBJECT-MATTER JURISDICTION BECAUSE BIA ACTED ON PLAINTIFF'S APRIL 8, 2019 REQUEST; PLAINTIFF'S PETITION FOR A WRIT OF MANDAMUS IS MOOT.

Plaintiff seeks a writ of mandamus to compel BIA to act on Plaintiff's April 8, 2019 request for a lien on Fox's IIM account pursuant to 25 C.F.R. § 115.601(b)(3). Doc. 7 at 3-4, 6; Doc. 7-3.[5] However, BIA has acted on Plaintiff's request, mooting the Petition and depriving this Court of subject-matter jurisdiction. Delorme-Gaines Decision, Danks Decl. II at ¶6, **Ex. 2**. The Delorme-Gaines Decision is presumably not to Plaintiff's liking insofar as it denies Plaintiff's request for a lien on Fox's IIM; however, this Court is not the forum for challenging BIA's decision, nor is mandamus an available remedy for doing so.

#### A. The Court Lacks Subject-Matter Jurisdiction Over a Moot Claim.

"Where a federal agency has since complied with the very duty imposed under federal law that the plaintiff seeks to enforce in the mandamus action, then the claim for mandamus relief under 28 U.S.C. § 1361 is moot.[6] Heily v. United States Department of Defense, 896 F.Supp.2d 25, 35–36 (D.D.C. 2012)[;] Mohammed v. Holder, 695 F.Supp.2d 284, 289–90 (E.D.Va. 2010). Therefore, the Court concludes this action is moot, and is subject to dismissal

[5] Plaintiff keeps attempting to broaden the original relief sought in her April 8, 2019 request. Later communications include demands that BIA issue a disbursement plan and perform other affirmative acts; however, because the BIA exercised its discretion in determining that it would not encumber Fox's IIM, no disbursement plan is necessary or even possible.

[6] BIA denies it had a ministerial duty to act in the manner requested by Plaintiff; nonetheless, BIA has acted on Plaintiff's April 8, 2019 request and issued a decision.

for lack of jurisdiction." Hanic v. Bureau of Indian Affairs, No. CV 14-216-M-DLC-JCL, 2015 WL 1879917, at *6 (D. Mont. Apr. 23, 2015)(footnote inserted).

> A federal court lacks subject-matter jurisdiction if a claim becomes moot. Brazil v. Ark. Dep't of Human Servs., 892 F.3d 957, 959 (8th Cir. 2018)("When the issues presented are no longer live or the parties lack a cognizable interest in the outcome, a case or controversy under Article III no longer exists because the litigation has become moot." (cleaned up)). A claim is moot when "changed circumstances already provide the requested relief and eliminate the need for court action." McCarthy v. Ozark Sch. Dist., 359 F.3d 1029, 1035 (8th Cir. 2004).

Dalton v. JJSC Props., LLC, 967 F.3d 909, 913 (8th Cir. 2020). "Mootness is a jurisdictional question because the Court 'is not empowered to decide moot questions or abstract propositions[.]'" North Carolina v. Rice, 404 U.S. 244, 246 (1971)(citations omitted).

> "(I)t is well settled that federal courts may act only in the context of a justiciable case or controversy." Benton v. Maryland, 395 U.S. 784, 788, 89 S.Ct. 2056, 2059, 23 L.Ed.2d 707 (1969). "Our lack of jurisdiction to review moot cases derives from the requirement of Article III of the Constitution under which the exercise of judicial power depends upon the existence of a case or controversy." Liner v. Jafco, Inc., 375 U.S. 301, 306 n. 3, 84 S.Ct. 391, 394, 11 L.Ed.2d 347 (1964); cf. Doremus v. Board of Education, 342 U.S. 429, 434, 72 S.Ct. 394, 397, 96 L.Ed. 475 (1952).

Securities & Exch. Comm'n v. Med. Comm. for Human Rights, 404 U.S. 403, 407 (1972). Plaintiff's claim is moot.

**B. Mandamus Is Not Available for Plaintiff's Requested Relief.**

Plaintiff may argue her request is not moot because she did not receive the relief she requested in her Petition, namely having BIA encumber Fox's IIM and create a disbursement plan. However, under the facts of this case such relief is not available through the mandamus statute, 28 U.S.C. § 1361, or the APA, 5 U.S.C. § 706(1).

> For section 1361 to apply, the plaintiff must seek "to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361. Mandamus may issue under section 1361 against an officer of the United States "only when the plaintiff has a clear right to relief, the defendant has a clear duty to perform the act in question, and the plaintiff has no adequate alternative remedy." Borntrager v. Stevas, 772 F.2d 419, 420 (8th Cir.1985).

Longie v. Spirit Lake Tribe, 400 F.3d 586, 591 (8th Cir. 2005)(emphasis added). "Similarly, to invoke jurisdiction under the APA, a party must show '(1) the agency had a nondiscretionary duty to act and (2) the agency unreasonably delayed in acting on that duty.' Qijuan Li[ v. Chertoff, No. 8:07-cv-50], 2007 WL 2123740, *2 [(D.Neb., July 19, 2007)](quoting Norton v. Southern Utah Wilderness Alliance, 542 U.S. 55, 63-65, 124 S.Ct. 2373, 159 L.Ed. 2d 137 (2004))." Sharadanant, 543 F.Supp.2d at 1075 (emphasis added).

**1. Plaintiff Does Not Have a Clear Right to Relief.**

Plaintiff asserts, "[BIA's] inaction is a potential violation of the Administrative Procedures Act with a Writ of Mandamus from a federal court as a potential solution under the Mandamus Statute when the BIA failed to act in a reasonable period of time. 28 U.S.C. § 1361[.]" Doc. 7 at 1 (emphasis added). Plaintiff cannot establish a clear right to relief.

The relevant duties of BIA with respect to the encumbrance of IIM accounts appear at 25 C.F.R. Part 115, Subpart E. However, those duties are owed to IIM account holders (like Fox), not to third parties (like Plaintiff). The BIA, as trustee, owes fiduciary duties to IIM account holders. Cobell v. Norton, 240 F.3d 1081, 1088 (D.C. Cir. 2001). Not only is the language of the regulations drafted to speak directly to account holders, but the stated purpose of the regulations is to set forth guidelines for the Secretary of the Interior "to carry out the trust duties owed to tribes and individual Indians to manage and administer trust assets for the exclusive benefit of tribal and individual Indian beneficiaries pursuant to federal law." 25 C.F.R. § 115.001. Plaintiff has identified no duty owed by BIA to her, a judgment creditor; there is no clear right to relief.

**2. BIA Has No Nondiscretionary Duty to Act.**

Plaintiff's Petition does not ask the Court to simply compel the BIA to issue a final decision in response to Plaintiff's April 8, 2019 request to encumber Fox's IIM account, rather she asks the Court to compel a specific outcome: that the BIA restrict Fox's IIM account and issue a disbursement plan pursuant to 25 C.F.R. § 115.601(b)(3). The relief Plaintiff requests is unavailable because pursuant to a "failure to act" claim under§ 706(1) of the APA, a court can only compel an agency to act, not to act in a specific way. Norton v. S. Utah Wilderness All., 542 U.S. 55, 65 (2004). When the "manner of [an agency's] action is left to the agency's discretion, a court can compel the agency to act, but has no power to specify what the action must be." Id.

> The possible difficulty with mandamus is the judicial gloss requiring that the duty sought must be a positive command so plainly defined as to be free from doubt. Prairie Band of Pottawatomie Tribe of Indians v. Udall, 355 F.2d 364 (10 Cir. 1966), cert. denied, 385 U.S. 831, 87 S. Ct. 70, 17 L.Ed.2d 67. As the Supreme Court has stated, "where the duty ... depends upon a statute or statutes the construction or application of which is not free from doubt, it is regarded as involving the character of judgment or discretion which cannot be controlled by mandamus." Wilbur v. United States ex rel. Kadrie, 281 U.S. 206, 219, 50 S.Ct. 320, 324, 74 L.Ed. 809 (1930).

State Highway Comm'n of Missouri v. Volpe, 479 F.2d 1099, 1104 n.6 (8th Cir. 1973).

The action Plaintiff seeks in her Petition is left to the discretion of BIA: 25 C.F.R. § 115.601(b) states, "The BIA may restrict your IIM account through an encumbrance if the BIA: … (3) Receives a money judgment from a Court of Indian Offenses pursuant to 25 CFR 11.208 or under any tribal law and order code." (emphasis added). It is well-settled that whether to restrict IIM accounts pursuant to tribal court money judgments is up to the discretion of the BIA. Peters v. Acting Midwest Reg'l Dir., Bureau of Indian Affairs, 55 IBIA 266, 269; 2012 WL 8436513 (2012); Boucher v. Acting E. Okla. Reg'l Dir., Bureau of Indian Affairs, 63 IBIA 338, 342, 2016 WL 5335849, at *4 (2016)(same). "The decision to allow or disallow an encumbrance

is a discretionary decision that rests with BIA." Honanie v. Northwest Reg'l Dir., Bureau of Indian Affairs, 53 IBIA 140, 148, 2011 WL 1797465, at *7 (2011)(quoting Quaempts v. Acting Nw. Reg'l Dir., 42 IBIA 272, 280, 2006 WL 1148724, at *6 (2006)). "Under both the statute and the regulations, the decision as to whether disbursements should be made from an IIM account to pay judgments … is placed within the informed discretion of BIA." Pretty Paint v. Rocky Mountain Reg'l Dir., Bureau of Indian Affairs, 38 IBIA 177, 179; 2002 WL 32345893 at *2 (2002). "Payment of a judgment with funds in an IIM account, even though payment was ordered by a court of competent jurisdiction, is thus not mandatory." Id.

The decision to encumber an IIM account is discretionary; it is not a ministerial duty subject to mandamus.

**3. Plaintiff Has An Adequate Alternative Remedy**

A BIA decision is not final if it may be appealed to a superior authority within the Department of the Interior. Fort Berthold Land and Livestock Assoc. v. Anderson, 361 F.Supp.2d 1045, 1050 n.3 (D.N.D. 2005). Plaintiff has an adequate alternative remedy, namely the right to appeal the Delorme-Gaines Decision to BIA's Great Plains Regional Director. Danks Decl. II, **Ex. 2** at 4; 25 C.F.R. §§ 2.3-2.4. A decision issued by the Great Plains Regional Director could then be appealed to the Interior Board of Indian Appeals ("IBIA"). 43 C.F.R. § 4.331. Decisions issued by the IBIA are final for the Department of the Interior, unless the decision itself states otherwise. 43 C.F.R. § 4.312.

Plaintiff has not appealed the Delorme-Gaines decision to the highest authority within the Department of Interior. So, not only is Plaintiff not entitled to mandamus because an alternative remedy of appeal exists, but Plaintiff is further barred from bringing before this Court an APA challenge to the Superintendent's action, because the Delorme-Gaines Decision is not "final

agency action" under the APA, 5 U.S.C. § 704.[7] Under 25 C.F.R. § 2.6 judicial review of a BIA decision is precluded unless the decision is "final."

> A party must exhaust administrative remedies when a statute or agency rule dictates that exhaustion is required. See White Mountain Apache Tribe v. Hodel, 840 F.2d 675, 677 (9th Cir.1988). Under Department of Interior regulations, if an agency decision is subject to appeal within the agency, a party must appeal the decision to the highest authority within the agency before judicial review is available. See 25 C.F.R. § 2.6(a); see also Western Shoshone Business Council v. Babbitt, 1 F.3d 1052, 1055 (10th Cir.1993) (administrative exhaustion completed under § 2.6(a) when party appeals to highest authority within agency).

Coosewoon v. Meridian Oil Co., 25 F.3d 920, 924–25 (10th Cir. 1994)(footnote omitted).

Plaintiff has administrative remedies available to her, starting with a timely appeal to the Regional Director. This Court lacks subject-matter jurisdiction for purposes of mandamus and for purposes of judicial review of the Delorme-Gaines Decision.

## II. PLAINTIFF FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED BECAUSE PLAINTIFF HAS FAILED TO PLEAD FACTS ADEQUATE TO ESTABLISH A PLAUSIBLE RIGHT TO THE AFFIRMATIVE INJUNCTIVE RELIEF SHE SEEKS.

The jurisdictional question is determinative. In the alternative, and for the same reasons discussed in Section I, supra, BIA contends Plaintiff has failed to state a claim upon which relief may be granted. Under the facts of this case, Plaintiff is not entitled to mandamus or injunctive relief under APA § 706(1).

## CONCLUSION

This Court lacks subject-matter jurisdiction and cannot issue a writ of mandamus or enter affirmative injunctive relief under the APA. This case must be dismissed.

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[7] Before bringing an APA action in this Court to challenge the Delorme-Gaines Decision, Plaintiff would have to first exhaust her administrative remedies, otherwise, this Court would lack subject-matter jurisdiction. Dalton v. Specter, 511 U.S. 462, 469 (1994)(the finality requirement is considered a necessary element of any APA claim); Franklin v. Massachusetts, 505 U.S. 788, 796 (1992)(requirement for final agency action is jurisdictional).

Dated: October 28, 2020

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