Nos. 22-1850 & 22-1482

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

VICTOR MANUEL FERNANDEZ BONILLA

Petitioner

v.

MERRICK B. GARLAND, Attorney General

Respondent

BRIEF *AMICUS CURIAE* OF THE AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE IN SUPPORT OF PETITIONER

ON THE PETITIONS FOR REVIEW OF
THE ORDERS FROM THE BOARD OF IMMIGRATION APPEALS

Gilles Bissonnette (No. 123868)
SangYeob Kim (No. 1183553)
AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE
18 Low Avenue
Concord, NH 03301
Tel.: (603) 333-2081
gilles@aclu-nh.org
sangyeob@aclu-nh.org

CORPORATE DISCLOSURE STATEMENT

Amicus curiae the **American Civil Liberties Union of New Hampshire** is a non-profit entity that does not have parent corporations. No publicly held corporation owns 10 percent or more of any stake or stock in *amicus curiae*.

/s/ SangYeob Kim
SangYeob Kim (No. 1183553)

RULE 29 STATEMENTS

Pursuant to Rule 29(a)(2), counsel for *amicus curiae* certify that all parties have consented to the filing of this brief. Pursuant to Rule 29(a)(4)(E), counsel for *amicus curiae* state that no counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

/s/ SangYeob Kim
SangYeob Kim (No. 1183553)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTERESTS OF *AMICUS CURIAE*

The American Civil Liberties Union of New Hampshire (ACLU-NH) is the New Hampshire affiliate of the American Civil Liberties Union (ACLU)—a nationwide, nonpartisan, public-interest organization with over 1.8 million members and supporters (including over 9,000 New Hampshire members and supporters). The ACLU-NH, through its New Hampshire Immigrants' Rights Project, engages in litigation by direct representation and as *amicus curiae* to encourage the protection of immigrants' rights guaranteed under the Immigration and Nationality Act (INA) and the United States Constitution.

In this role, the ACLU-NH has participated in cases concerning the statutory and constitutional rights of noncitizens. *See, e.g., H.H. v. Garland*, 52 F.4th 8 (1st Cir. 2022); *Chavez v. Garland*, 51 F.4th 424 (1st Cir. 2022); *Rivera-Medrano v. Garland*, 47 F.4th 29 (1st Cir. 2022); *Barros v. Garland*, 31 F.4th 51 (1st Cir. 2022); *Adeyanju v. Garland*, 27 F.4th 25 (1st Cir. 2022); *Hernandez Lara v. Barr*, 962 F.3d 45 (1st Cir. 2020); *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021); *Perez-Trujillo v. Garland*, 3 F.4th 10 (1st Cir. 2021); *Compere v. Nielsen*, 358 F. Supp. 3d 170 (D.N.H. 2019).

The ACLU-NH has a particular interest in this case because it involves the legal question of the proper standard for determining the nexus between the persecution an asylum seeker has or will suffer and one of the five statutorily-

protected grounds enumerated in 8 U.S.C. § 1231(b)(3)(A) in withholding of removal cases. This Court did not address this question in *Chavez v. Garland*, 51 F.4th 424, 430 n.4 (1st Cir. 2022). This Court should answer this question in the instant case.

SUMMARY OF ARGUMENT

Amicus argues that this Court should find that the statutory language is clear that the proper nexus standard for withholding of removal is the "a reason" standard and thereby reject the holding of *Matter of C-T-L-*, 25 I. & N. Dec. 341 (BIA 2010). In *C-T-L-*, the BIA concluded that the statute governing the nexus requirement in withholding of removal cases where an asylum seeker must show a connection between past or anticipated persecution and one of the five statutorily-protected grounds—8 U.S.C. § 1231(b)(3)(A) -(C)—is ambiguous and thus applied the "one central reason" standard that is used in asylum applications under 8 U.S.C. § 1158(b)(1)(B)(i). Under this standard used to establish the nexus requirement in asylum applications, an applicant must establish that "race, religion, nationality, membership in a particular social group, or political opinion was or will be at least *one central reason* for persecuting the applicant." 8 U.S.C. § 1158(b)(1)(B)(i) (emphasis added). However, the withholding of removal statute does not use this "one central reason" standard and, instead, uses an "a reason" standard. *See* 8 U.S.C. § 1231(b)(3)(C).

There is currently a circuit split on this issue. The Sixth and Ninth Circuits determined that the statutory language of Section 1231(b)(3)(A)-(C) was unambiguous and rejected *Matter of C-T-L-*'s holding that bootstrapped the "one central reason" nexus standard used in asylum applications under 8 U.S.C. § 1158(b)(1)(B)(i) to the withholding of removal context. *See Barajas-Romero v. Lynch*, 846 F.3d 351, 360 (9th Cir. 2017); *Guzman-Vazquez v. Barr*, 959 F.3d 253, 274 (6th Cir. 2020). On the other hand, the Second, Third, and Fifth Circuits found that the "one central reason" nexus standard used in asylum applications under 8 U.S.C. § 1158(b)(1)(B)(i) applies in withholding of removal cases when interpreting Section 1231(b)(3)(A)-(C). *See Quituizaca v. Garland*, 52 F.4th 103 (2d Cir. 2022); *Gonzalez-Posadas v. Att'y Gen.*, 781 F.3d 677, 685 n.6 (3d Cir. 2015); *Vazquez-Guerra v. Garland*, 7 F.4th 265, 271 (5th Cir. 2021). While this Court has previously applied the "one central reason" standard in the withholding of removal context, the Court has never explained why such a standard is consistent with Section 1231(b)(3)(A)-(C).

This Court should visit this legal question and join the Sixth and Ninth Circuits. The statute governing the nexus standard of withholding of removal—8 U.S.C. § 1231(b)(3)(A) -(C)—is unambiguous under the plain meaning of the statutory language. When Congress enacted the REAL ID Act of 2005, Congress chose the "one central reason" standard for asylum and the "a reason" standard for

withholding of removal. *Compare* 8 U.S.C. § 1158(b)(1)(B)(i) ("To establish that the applicant is a refugee within the meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least *one central reason* for persecuting the applicant.") (emphasis added) *with* 8 U.S.C. § 1231(b)(3)(C) ("In determining whether an alien has demonstrated that the alien's life or freedom would be threatened *for a reason* described in subparagraph (A), the trier of fact shall determine whether the alien has sustained the alien's burden of proof, and shall make credibility determinations, in the manner described in clauses (ii) and (iii) of section 1158(b)(1)(B) of this title.") (emphasis added). Under the first step of the statutory interpretation analysis, Section 1231(b)(3)(C) means what it says—its use of the phrase "a reason" means "a reason," not the "central reason." This "a reason" language is naturally less demanding than the "one central reason" standard used in asylum applications. *See Guzman-Vazquez v. Barr*, 959 F.3d 253 (6th Cir. 2020); *Barajas-Romero v. Lynch*, 846 F.3d 360 (9th Cir. 2017).

Indeed, in enacting the REAL ID Act, Congress cross-referenced the credibility and corroborating evidence standard of asylum for withholding of removal, but not the "one central reason" nexus standard. 8 U.S.C. § 1231(b)(3)(A). Moreover, the post-REAL ID Act legislative proposal also supports the conclusion that Congress meant to apply the nexus standard for

asylum and withholding of removal differently, in which this proposed version attempted to replace the phrase "a reason" with the phrase "one central reason." *See* H.R.391, 115th Cong.

Accordingly, this Court should hold that the BIA's position that the statute is ambiguous is erroneous and reject *Matter of C-T-L-*.

ARGUMENT

I. CANON OF STATUTORY INTERPRETATION

To determine whether there is ambiguity in the statute, this Court first employs traditional tools. *See Mosquera-Perez v. INS*, 3 F.3d 553, 554-55 (1st Cir. 1993). "First and foremost, this requires beginning with a textualist approach, as the 'plain meaning' of statutory language controls its construction." *Flock v. United States DOT*, 840 F.3d 49, 55 (1st Cir. 2016). This plain and ordinary meaning interpretation "seek[s] to afford the law's terms their ordinary meaning at the time Congress adopted them." *Silva v. Garland*, 27 F.4th 95, 102 (1st Cir. 2022) (internal quotations omitted). This plain and ordinary meaning of the statute is critical because "the Court need not resort to *Chevron* deference . . . for Congress has supplied a clear and unambiguous answer to the interpretative question at hand." *Pereira v. Sessions*, 138 S. Ct. 2105, 2114 (2018). Thus, this Court should "exhaust all the traditional tools of construction in all the ways it would if it had no agency to fall back on before it defers to an agency's policy-

laden choice between two reasonable readings of a rule." *United States v. Lewis*, 963 F.3d 16, 28 (1st Cir. 2020) (quoting *Kisor v. Wilkie*, 130 S. Ct. 2400, 2415 (2019)).

II. THE COURT SHOULD REJECT *MATTER OF C-T-L-*, 25 I. & N. DEC. 341 (BIA 2010) BECAUSE IT IS INCONSISTENT WITH THE PLAIN LANGUAGE OF THE STATUTE

The Court should reject *Matter of C-T-L-*, 25 I. & N. Dec. 341 (BIA 2010), which held that the "one central reason" standard that applies to the nexus inquiry in asylum applications pursuant to 8 U.S.C. § 1158(b)(1)(B)(i) also applies to the nexus inquiry in applications for withholding of removal under 8 U.S.C. § 1231(b)(3)(A)-(C). This Court should hold that the "a reason" standard used in the withholding of removal statute is not identical to—and is, in fact, less demanding than—the asylum statute's "one central reason" standard. *See* 8 U.S.C. § 1231(b)(3)(C). *See Barajas-Romero v. Lynch*, 846 F.3d 351, 360 (9th Cir. 2017); *Guzman-Vazquez v. Barr*, 959 F.3d 253, 274 (6th Cir. 2020).

Prior to the REAL ID Act, Congress did not specify what standard the nexus prong requires in either asylum or withholding of removal cases.[1] *See Guzman-Vazquez*, 959 F.3d at 270. The BIA applied "at least in part" standard for both forms of relief. *See Matter of S-P-*, 21 I. & N. Dec. 486, 494 (BIA 1996) (applying

[1] Congress changed the term of "withholding of deportation" to "withholding of removal." *See Hernandez-Barrera v. Ashcroft*, 373 F.3d 9, 21 n.11 (1st Cir. 2004).

"in part" standard for asylum); *Matter of V-T-S-*, 21 I. & N. Dec. 792, 796 (BIA 1997) (same for withholding of removal). Through the REAL ID Act, Congress adopted "at least one central reason" for asylum. *Aldana-Ramos v. Holder*, 757 F.3d 9, 18 (1st Cir. 2014); 8 U.S.C. § 1158(b)(1)(B)(i). However, Congress did not adopt the same statutory language for withholding of removal but, instead, included "a reason" language. *See* 8 U.S.C. § 1231(b)(3)(C).

The ordinary meaning inquiry is "a textualist approach, as the 'plain meaning' of statutory language controls its construction." *Flock*, 840 F.3d at 55. The withholding of removal statute has two parts where it discusses the nexus requirement. The first part is in 8 U.S.C. § 1231(b)(3)(A), which states that there should be no removal to a country where the applicant's "life or freedom would be threatened in that country *because of* the [applicant's] race, religion, nationality, membership in a particular social group, or political opinion." (emphasis added). The comparable part for asylum is 8 U.S.C. § 1101(a)(42), which states that a refugee is one "who is persecuted or who has a well-founded fear of persecution *on account of* race, religion, nationality, membership in a particular social group, or political opinion." (emphasis added).

The second part of the withholding of removal statute discussing the nexus requirement is 8 U.S.C. § 1231(b)(3)(C). Entitled "Sustaining burden of proof; credibility determinations," this section states that, "[i]n determining whether an

[applicant] has demonstrated that the [applicant's] life or freedom would be threatened *for a reason* described in subparagraph (A), the trier of fact shall determine whether the [applicant] has sustained the [applicant's] burden of proof, and shall make credibility determinations, in the manner described in clauses (ii) and (iii) of [8 U.S.C. 1158(b)(1)(B)]." (emphasis added). The comparable part for asylum is 8 U.S.C. § 1158(b)(1)(B)(i), which states that, "[t]o establish that the applicant is a refugee within the meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be *at least one central reason* for persecuting the applicant." (emphasis added).

Because 8 U.S.C. § 1231(b)(3)(C) explicitly governs and is titled "sustaining burden of proof," the statutory interpretation should focus on this section instead of 8 U.S.C. § 1231(b)(3)(A).[2] *See Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998) ("the title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute").

The withholding of removal statutory language only contains "a reason" not "one central reason." 8 U.S.C. § 1231(b)(3)(C). The plain meaning of "a reason" is naturally less demanding than "one central reason." *Barajas-Romero*, 846 F.3d

[2] For this reason, the Second Circuit's *Quituizaca* focusing on "because of" is unpersuasive. *See Quituizaca*, 52 F.4th at 109-110.

at 360; *Guzman-Vazquez*, 959 F.3d at 272. Thus, "the language Congress used to describe the two standards conveys very different meanings." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 430 (1987). "The different emphasis of the two standards which is so clear on the face of the statute is significantly highlighted by the fact that the same Congress simultaneously" adopted one central reason for asylum and a reason for withholding of removal. *Id*. at 432.

The statutory scheme further confirms that Congress did not intend to apply the "one central reason" standard of asylum to withholding of removal. "When Congress amended the withholding of removal statute to clarify the applicable burden of proof, it cross-referenced clauses (ii) and (iii) of the asylum statute's burden-of-proof provision, but not clause (i)"—the clause adopting one central reason. *Barajas-Romero*, 846 F.3d at 358. Thus, this omission was a deliberate choice.[3] "[W]here Congress includes particular language in one section of a statute

[3] The Second Circuit did not find this deliberate choice of cross-reference by Congress persuasive. *See Quituizaca*, 52 F.4th at 110-111. For this conclusion, the Second Circuit explained that 8 U.S.C. "§ 1158(b)(1)(B)(i) was not cross-referenced" because the meaning of "refugee" for asylum does not apply to withholding of removal. This reasoning is erroneous. Both asylum and withholding of removal derive from the United States' obligation under the Refugee Convention. *See Garcia v. Sessions*, 856 F.3d 27, 30-31 (1st Cir. 2017) ("The roots of [both asylum and withholding of removal] statutory provision[s] may be traced to the 1951 United Nations Convention Relating to the Status of Refugees . . . ."). Moreover, Congress explicitly "linked the withholding statute to another provision of the asylum statute that uses the term 'refugee.'" *Guzman-Vazquez*, 959 F.3d at 273 (citing 8 U.S.C. §§ 1231(b)(3)(C), 1158(b)(1)(B)(ii)).

but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Cardoza-Fonseca*, 480 U.S. at 432 (internal quotations omitted). *C-T-L-* acknowledges this point. 25 I. & N. Dec. at 344-45. Yet, it relied on *Negusie v. Holder*, 555 U.S. 511, 518 (2009), to note that "silence is not conclusive" in the statutory interpretation analysis. *Id*. at 345. Thereafter, the BIA made a leap and reasoned that "[t]here is no indication that Congress intended to change this [uniform] approach that [the BIA] had traditionally applied when it passed the REAL ID Act." *Id*. The BIA went even further and concluded that "all indications are that Congress intended to apply the 'one central reason' standard uniformly to both asylum and withholding claims." *Id*.

The BIA's reliance on *Negusie*'s canon of statutory construction is misplaced. Indeed, the Supreme Court in *Negusie* held that the statute in question—8 U.S.C. § 1101(a)(42)—was silent on "whether the statutory text mandates that coerced actions must be deemed assistance in persecution." *Negusie*, 555 U.S. at 518. Section 1101(a)(42), which is known as the so-called "persecutor bar," only mentions that "any person who ordered, incited, assisted, or otherwise participated in the persecution" is not a refugee. As the Supreme Court noted, this statutory language is silent on whether this persecutor bar does not include a "coerced actions" exception since the statutory language does not appear

to have any exceptions. On the other hand, 8 U.S.C. § 1231(b)(3)(C) is not silent on whether the "one central reason" standard or "a reason" standard is applicable for withholding of removal. Again, Congress explicitly included "a reason" as the standard for determining nexus, not the "one central reason" standard. 8 U.S.C. § 1231(b)(3)(C). Thus, the BIA's observation that the statute is silent on which nexus standard Congress included for withholding of removal is contrary to the statutory text. The inquiry should end here. "[T]he Court need not resort to *Chevron* deference . . . for Congress has supplied a clear and unambiguous answer to the interpretative question at hand." *Pereira*, 138 S. Ct. at 2113.

To the extent that this Court may review legislative history for determining whether the statutory language in question is genuinely ambiguous, legislative history further confirms there was no Congressional intent to apply the "one central reason" standard for asylum to the withholding of removal context. *See Pereira*, 138 S. Ct. at 2119 (rejecting the government's legislative history argument because it does not support the government's "atextual position"). The withholding of removal section in the Conference Report explains how Congress enacted 8 U.S.C. § 1231(b)(3). *See* H.R. Rep. No. 109-72 at 168-69 (2005). Congress first explained that "withholding of removal involves similar consideration of credibility and corroboration factors and some of the same issues regarding Ninth Circuit jurisprudence." *Id*. at 169 (emphasis added). Nonetheless,

Congress did not cross-reference the nexus standard for asylum to withholding of removal. Nor did Congress define "a reason" as "one central reason." Instead, Congress stated that it was codifying for "withholding of removal applications the same standards for sustaining the applicable burden of proof and for assessing credibility that would be used for asylum adjudications under clauses *208(b)(1)(B)(ii)* and *(iii)* of the INA" not clause (i)—one central reason. *Id*. (emphasis added).

Moreover, a subsequent legislative proposal supports that Congress did not mean to apply the same nexus standard for asylum and withholding of removal. In 2017, the House Judiciary Committee approved an amended version of the Asylum Reform and Border Protection Act of 2017. H.R.391, 115th Cong. This version contained a proposed amendment to 8 U.S.C. § 1231(b)(3)(C) to replace "a reason" with "one central reason." *Id*. at 17. During the hearing before the House Judiciary Committee, U.S. Congressman Mike Johnson noted that "H.R.391 brings the standard for withholding [of] removal in line with that of asylum." H.R. 391, The "Asylum Reform and Border Protection Act"; And H. Res. 446, The "Resolution of Inquiry": Hearing Before the Comm. On the Judiciary, 115 Cong. 1 (2017) (Jul. 26, 2017) (Statement of Mike Johnson). This bill, at minimum, acknowledges that the meaning of "a reason" Congress adopted for withholding of removal in the REAL ID Act was not identical to the "one central reason" standard

for asylum. *See generally MCI Telecomms. Corp. v. AT&T Co.*, 512 U.S. 218, 232-33 (1994) (reviewing legislative histories of later enactments); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (same).

Thus, the BIA's point that it can apply the "one central reason" standard to withholding of removal because there is an indication that Congress intended to apply a uniform standard for both asylum and withholding of removal is an erroneous interpretation. Accordingly, this Court should reject *C-T-L-*.[4]

III. THE COURT CAN AND SHOULD REJECT *MATTER OF C-T-L-* NOTWITHSTANDING THE COURT'S PRIOR PRECEDENT

While *amicus* acknowledges that this Court has applied the "one central reason" standard in previous withholding of removal cases, the Court can and should address the validity of *C-T-L-*. In these cases, it appears that, the petitioners

[4] The Second Circuit avoided the plain meaning interpretation of "a reason" by explaining that it is "not the most natural reading of § 1231(b)(3)(C)." *Quituizaca*, 52 F.4th at 111. For this conclusion, the Second Circuit explained that "for a reason" can be ignored because it "appears as part of the prepositional phrase." *Id*. The Second Circuit suggests that "for a reason described in" would be the same as "as described in." *Amicus* disagrees. "For a reason" is not part of the prepositional phrase. For example, the natural reading of "for a reason <u>*described in*</u> subparagraph (A)" would be "for a reason <u>*related to the protected grounds set forth*</u> in subparagraph (A)." Accordingly, the phrase "for a reason" should not be ignored as the nexus standard imposed by Congress. *See Narragansett Indian Tribe v. Rhode Island*, 449 F.3d 16, 26 (1st Cir. 2006) (en banc) (the Court "must read statutes, whenever possible, to give effect to every word and phrase"); *City of Providence v. Barr*, 954 F.3d 23, 37 (1st Cir. 2020) ("Courts generally ought not to interpret statutes in a way that renders words or phrase either meaningless or superfluous.").

never challenged *C-T-L-*. *See, e.g., Sánchez-Vásquez v. Garland*, 994 F.3d 40, 47 (1st Cir. 2021); *Marquez-Paz v. Barr*, 983 F.3d 564, 565 (1st Cir. 2020); *Costa v. Holder*, 733 F.3d 13, 16 (1st Cir. 2013); *Beltrand-Alas v. Holder*, 689 F.3d 90, 93 (1st Cir. 2012). Accordingly, this Court never analyzed *C-T-L-*'s validity, but rather simply presumed—because it was unchallenged—that the "one central reason" standard applied in the withholding of removal context.

Even if the Court finds that it is bound by prior panels' unchallenged statements, this Court can still analyze the validity of *C-T-L-*. Typically, a panel of this Court is bound by an on-point holding of a previously published decision of another panel. *See United States v. Holloway*, 630 F.3d 252, 258 (1st Cir. 2011). However, this doctrine "is neither a straightjacket nor an immutable rule." *Carpenters Local Union No. 26 v. U.S. Fid. & Guar. Co.*, 215 F.3d 136, 142 (1st Cir. 2000). As an exception, this Court held that "non-binding but compelling caselaw" can "convince[] [the panel] to abandon [prior precedents]." *AER Advisors, Inc. v. Fid. Brokerage Servs., LLC*, 921 F.3d 282, 293-94 (1st Cir. 2019). Here, *Guzman-Vazquez v. Barr*, 959 F.3d 253 (6th Cir. 2020) and *Barajas-Romero v. Lynch*, 846 F.3d 351 (9th Cir. 2017) are the convincing authority that should cause this Court to visit the validity of *C-T-L-*, especially where no prior panel has ever expressly addressed this issue. *Cf. Rojas-Perez v. Holder*, 699 F.3d 74, 81 (1st Cir. 2012) (electing to address the social visibility prong for asylum

notwithstanding a prior panel's decision upholding the BIA's view on social visibility because "it is not [the Court's] task to operate blindly and unscientifically in the face of legitimate challenges to either [its] prior rulings or the adjudications of an administrative agency tasked with interpreting its organic statute.").

CONCLUSION

For the foregoing reasons, *amicus* respectfully submits that the Court should reject *Matter of C-T-L-*, 25 I. & N. Dec. 341 (BIA 2010).

Dated: February 1, 2023

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE

/s/ SangYeob Kim
Gilles Bissonnette (No. 123868)
SangYeob Kim (No. 1183553)
AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE
18 Low Avenue
Concord, NH 03301
Tel.: (603) 333-2081
gilles@aclu-nh.org
sangyeob@aclu-nh.org

CERTIFICATE OF COMPLIANCE

I certify that the foregoing Brief complies with the type-volume limit of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B)(i) and the typeface requirement of Fed. R. App. P. 32(a)(5)(A) [proportionally spaced face 14-point or larger]. The Brief, containing 3,540 words, exclusive of those items that, under Fed. R. App. P. 32(f), are excluded from the word count, was prepared in proportionally spaced Times New Roman 14-point type.

/s/ SangYeob Kim
SangYeob Kim (No. 1183553)

Dated: February 1, 2023

CERTIFICATE OF SERVICE

I certify that this Brief is served to all counsel of record registered in ECF on February 1, 2023.

/s/ SangYeob Kim
SangYeob Kim (No. 1183553)

Dated: February 1, 2023