


No. 23-2433

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**In the United States Court of Appeals  
For the Seventh Circuit**

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,  
*Plaintiff-Appellant,*

v.

KILOLO KIJAKAZI, ACTING COMMISSIONER OF  
THE SOCIAL SECURITY ADMINISTRATION,

*Defendant-Appellee.*

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On Appeal from the United States District Court for the  
Northern District of Illinois, Chicago Division, No. 1:23-cv-00003

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**OPENING BRIEF FOR APPELLANT**

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## CERTIFICATE OF INTERESTED PERSONS

Appellant certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal:

- 1) Plaintiffs-Appellants: [REDACTED]
- 2) Counsel for the Plaintiffs-Appellants: Bryan Konoski, Kira Treyvus, and Konoski & Partners, P.C. d/b/a THE FEDERAL APPEALS FIRM.
- 3) Defendants-Appellees: The Commissioner of the Social Security Administration.

Dated: October 18, 2023  
New York, NY

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## **STATEMENT REGARDING ORAL ARGUMENT**

Plaintiff-Appellant, [REDACTED], does not ask for oral argument in this matter. The Plaintiff-Appellant consents to this Court deciding the case on submission.

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## **STATEMENT OF JURISDICTION**

(A) **The basis for subject matter jurisdiction:** The Plaintiff brings this appeal of the District Court's decision affirming the denial of the Plaintiff's social security disability benefits. Subject matter jurisdiction exists pursuant to 42 U.S.C. § 405(g).

(B) **The basis for the court of appeals' jurisdiction:** This Court's appellate jurisdiction to review the District Court's final order arises from 28 U.S.C. § 1291.

(C) **The filing dates establishing the timeliness of the appeal:** The Court issued a final judgment on July 11, 2023. The Plaintiff filed a notice of appeal on July 21, 2023. The notice of appeal was timely filed pursuant to the Federal Rules of Appellate Procedure 4(B). The electronic record on appeal was accepted by the Circuit on July 25, 2023. The Plaintiff's brief is timely filed within 40 days after the record is filed, pursuant to Federal Rules of Appellate Procedure 31(a).

(D) **The appeal is from a final order or judgment:** The District Court issued a final judgment on July 11, 2023, disposing of all issues in the case.



## **STATEMENT OF ISSUES**

DID THE COMMISSIONER ERR AS A MATTER OF LAW BY FAILING TO ACCOUNT FOR THE PLAINTIFF'S MILD MENTAL LIMITATIONS IN THE RFC AND BY FAILING TO PROVIDE A DETAILED RFC ANALYSIS AT STEP 4 OF THE SEQUENTIAL EVALUATION?

## STATEMENT OF THE CASE

On December 3, 2019, the claimant filed an application for supplemental security income, alleging disability beginning June 14, 2019. The claim was denied initially on February 22, 2021, and upon reconsideration on October 4, 2021. Thereafter, the claimant filed a written request for hearing received on November 2, 2021. On May 10, 2022, a telephone hearing was held. (Doc. 10-1 PageID#47). Plaintiff filed a timely request for review with the Appeals Council, which was denied on November 15, 2022 (Doc. 10-1 PageID#24). Accordingly, the ALJ's decision became the Commissioner's final decision.

Mr. [REDACTED] appealed to the federal District Court asking the court to overturn the Commissioner's decision and remand the case for further consideration. The federal District Court issued an order denying the Plaintiff's request for relief and affirming the Commissioner's decision denying disability benefits to the Plaintiff. (Doc 22 PageID#1262-1265).

There is one issue raised on appeal to the Seventh Circuit Court of Appeals, which is whether the ALJ erred in the failure to incorporate any

functional limitations in the RFC related to the Plaintiff's mild mental limitations or by failing to explain why no such limitations were included.

### **SUMMARY OF THE ARGUMENT**

The ALJ found that the Plaintiff had mild mental limitations the Paragraph B categories of social interaction and concentration, persistence, and pace ("CPP"). The ALJ analyzed the facts and evidence, including the results of a consultative examination ("CE") and the longitudinal record. The ALJ found that the CE supported that the Plaintiff did, in fact, have some limitations in social interaction and CPP. On balance, when considering the entirety of the record, including the CE results and the longitudinal record, the ALJ found that the Plaintiff had mild mental limitations. However, despite finding that the Plaintiff had mild mental limitations, the ALJ failed to include any functional limitations in the RFC and also failed to explain why no functional limitations were included. As such, the ALJ committed reversible error.

## **STANDARD OF REVIEW**

The Circuit Court reviews the District Court's judgment *de novo*, see Skinner v. Astrue, 478 F.3d 836, 841 (7th Cir.2007), meaning that the Court reviews the ALJ's decision directly, see Schmidt v. Astrue, 496 F.3d 833, 841 (7th Cir.2007). In doing so, the Circuit Court reviews the ALJ's decision to see if it is supported by “substantial evidence,” 42 U.S.C. § 405(g); see also Schmidt, 496 F.3d at 841, meaning “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion,” Skinner, 478 F.3d at 841 (*quoting* Richardson v. Perales, 402 U.S. 389, 401, 91 S.Ct. 1420, 28 L.Ed.2d 842 (1971)). As such, the Court’s role is limited. The Court is not allowed to displace the ALJ's judgment by reconsidering facts or evidence, or by making independent credibility determinations. See Jens v. Barnhart, 347 F.3d 209, 212 (7th Cir.2003). In fact, even if “ ‘reasonable minds could differ concerning whether [the Plaintiff] is disabled,’” the Court must nevertheless affirm the ALJ's decision denying her claims if the decision

is adequately supported. Schmidt, 496 F.3d at 842 (quoting Books v. Chater, 91 F.3d 972, 978 (7th Cir.1996)).

This Court's review of the Commissioner's decision is limited to determining whether the Commissioner's decision, as a whole, is supported by substantial evidence and whether the Commissioner has employed the correct legal standards. 42 U.S.C. § 405(g). Substantial evidence is "more than a mere scintilla;" it is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401, 91 S.Ct. 1420, 1427, 28 L.Ed.2d 842 (1971).

The Circuit Court will reverse the decision of an ALJ only if it is based on incorrect legal standards or unsupported by substantial evidence. Additionally, if the Commissioner fails to apply the correct legal standards or fails to provide a reviewing court with a sufficient basis to determine that the correct legal principles were followed, it is grounds for reversal. See Clifford v. Apfel, 227 F.3d 863, 869 (7th Cir. 2000) (citing 42 U.S.C. § 405(g)).



## ARGUMENT

### **THE COMMISSIONER ERRED AS A MATTER OF LAW BY FAILING TO ACCOUNT FOR THE PLAINTIFF'S MILD MENTAL LIMITATIONS IN THE RFC AND BY FAILING TO PROVIDE A DETAILED RFC ANALYSIS AT STEP 4 OF THE SEQUENTIAL EVALUATION.**

#### **Applicable law:**

The Regulations and Seventh Circuit caselaw makes clear that an ALJ's RFC assessment must incorporate all of a claimant's functional limitations supported by the medical record, even if those limitations do not individually rise to the level of a severe impairment, and the limitations imposed by the impairments are minor. See DeCamp v. Berryhill, 916 F.3d 671, 675-76 (7th Cir. 2019); Varga v. Colvin, 794 F.3d 809, 813 (7th Cir. 2015); Yurt v. Colvin, 758 F.3d 850, 857-59 (7th Cir. 2014); Terry v. Astrue, 580 F.3d 471, 477 (7th Cir. 2009) (an ALJ must fully consider a claimant's mental impairments when assessing the RFC, even if those impairments are non-severe); Denton v. Astrue, 596 F.3d 419, 423 (7th Cir. 2010). See also SSR 96-8p; 20 C.F.R. §§ 404.1545(a), 416.945(a).

“While a mild ... limitation in an area of mental functioning does not necessarily prevent an individual from securing gainful employment, the ALJ must still affirmatively evaluate the effect much mild limitations have on the claimant's RFC.” Simon-Leveque v. Colvin, 229 F. Supp. 3d 778, 787 (N.D. Ill. 2017) (remanding when ALJ failed to explain why mild limitations in mental functioning did not require RFC limitations). Courts have consistently found that an ALJ errs by failing to account for mild mental limitations resulting from a claimant's mental impairment when assessing the individual's mental RFC. See Kelli M. v. Saul, No. 1:20-cv-1731-DLP-JRS, 2021 WL 4236802, at \*5-6 (S.D. Ind. Sept. 17, 2021) (remanding where ALJ failed to explain why mild limitations in mental functioning did not require RFC limitations); Julie J. v. Kijakazi, No. 1:20-cv-1597-SEB-DLP, 2021 WL 4437587, at \*2 (S.D. Ind. Sept. 28, 2021) (If, after consideration, the ALJ determines that a non-severe mental impairment “[does] not merit a non-exertional limitation in the RFC, he [is] obligated to explain that conclusion so that [the Court] can follow the basis of his reasoning.”); Anthony W. v. Kijakazi, No. 20 C 6209, 2022 WL 1062334, at \*4 (N.D. Ill. Apr. 8, 2022) (“[E]ven if the ALJ's RFC



determinations were to remain unchanged after an evaluation of the functional limitations, an ALJ is still required to articulate whether her mild functional limitations findings in the B criteria categories are consistent with her RFC analysis.”); Alesia v. Astrue, 789 F.Supp.2d 921, 933–34 (N.D. Ill. 2011) (the ALJ's failure to account for the claimant's mild limitation in her activities of daily living, mild limitation in social functioning, and mild limitation in concentration, persistence, or pace necessitates a remand); Paar v. Astrue, No. 09 C 5169, 2012 WL 123596, at \*13 (N.D. Ill. Jan. 17, 2012) (ALJ's RFC analysis failed to account for the mild mental limitations found in the claimant's activities of daily living, social functioning, and concentration); Koswenda v. Astrue, No. 08 C 4732, 2009 WL 958542, at \*5 (N.D. Ill. Apr. 2, 2009) (Plaintiff's “limitations in his ability to maintain concentration, persistence or pace, ... even though mild, should have been included in questions to the VE”).

**Argument:**

Set forth below, the Plaintiff will explain, first, how the ALJ erred in this case. The Plaintiff will then explain how the District Court erred. Although the Circuit Court reviews the District Court’s judgment *de*

*novo*, the Plaintiff believes that it is important to demonstrate how and why the District Court's decision is also erroneous. Based on the arguments below, the Plaintiff requests that this Court Order that the denial of disability benefits be vacated and the case be remanded for further consideration.

**A. The ALJ erred as a matter of law by failing to include functional limitations in the RFC related to the Plaintiff's mild mental limitations and by failing to explain why no functional limitations were included in the RFC.**

In this case, the ALJ found that the Plaintiff's has a severe impairment of "brain meningiomas". (Doc. 10-1 PageID#50). The ALJ acknowledges that "the claimant's allegations focus tightly on symptoms he attributes to his brain surgeries and to the side effects of his medication". (Doc. 10-1 PageID#50). The Plaintiff underwent a craniotomy for resection and biopsy of a brain mass in June 2019 after an episode of syncope or seizure with left-sided weakness. (Doc. 10-1 PageID#51, Doc. 10-1 PageID#526). In April 2022 after the recurrence of brain masses was detected in early 2022, the Plaintiff underwent a second brain surgery. (Doc. 10-1 PageID#51, Doc. 10-2 PageID#960).

The ALJ found that the Plaintiff has mild limitations in two of the Paragraph B criteria. (Doc. 10-1 PageID#51). Specifically, the ALJ found mild limitations in concentrating, persisting, or maintaining pace; and mild limitations in interacting with others. (Doc. 10-1 PageID#51).

With respect to the Plaintiff's mild limitations in interacting with others, the ALJ noted that the Plaintiff "alleges difficulty getting along with others due to irritability and anxiety". The ALJ further noted that "[h]is presentation at the consultative examination **suggested some problems in this area . . .**" (Doc. 10-1 PageID#51). At the psychological consultative examination, the Plaintiff reported obsessive thinking, overthinking things, and difficulty being around people. He stated he feels they are judging him and that he can be aggressive or irritable. He does not believe he can control the worry. (Doc. 10-1 PageID#777). The Plaintiff also reported two arrests, one for theft in 1991 and one for burglary in 2007. (Doc. 10-1 PageID#778). Plaintiff asserts that the two arrests also demonstrate that the Plaintiff has social difficulties. The Plaintiff stated in his adult function report that he does not "like people". (Doc. 10-1 PageID#53, Doc. 10-1 PageID#299).

With respect to the Plaintiff's mild limitations in concentrating, persisting, or maintaining pace, the ALJ noted that "the consultative examination found him to have *some problems with working memory, such as with digit spans*, but the longitudinal record supports no more than mild limitation in this area." (Doc. 10-1 PageID#51-#52)(emphasis added). The consultative examination notes that the Plaintiff reported that he has "clouded thinking", "obsessive thinking" and he experiences "overthinking things". (Doc. 10-1 PageID#777). During his memory test, he was able to repeat 4 digits forwards, but mixed them up in his attempt to repeat them backward. (Doc. 10-1 PageID#778).

Although the ALJ finds that the Plaintiff has mild mental limitations, and specifically finds that he has "some problems" in interacting with others and with working memory (Doc. 10-1 PageID#51-#52), the ALJ does not explain anywhere in the decision what functional limitations, if any, should have been incorporated into the RFC. The entirety of the ALJ's discussion of the Plaintiff's mental limitations occurred in Step 2 and 3 of the decision. The ALJ then promised to provide a more thorough RFC assessment at Steps 4 and 5, but never provided the promised analysis. The ALJ stated,

“The limitations identified in the “paragraph B” criteria are not a residual functional capacity assessment but are used to rate the severity of mental impairments at steps 2 and 3 of the

sequential evaluation process. The mental residual functional capacity assessment used at steps 4 and 5 of the sequential evaluation process requires a more detailed assessment. The following residual functional capacity assessment reflects the degree of limitation the undersigned has found in the paragraph B mental functioning analysis. (Doc. 10-1 PageID#52).

Despite promising to provide a more detailed RFC assessment at Steps 4 and 5, the ALJ never followed through on a more thorough assessment at these later Steps of the evaluation process. As such, the ALJ failed to provide an RFC assessment with respect to the Plaintiff’s mental limitations.

Nevertheless, what we do know, with certainty, is that the ALJ found that the Plaintiff had mild mental limitations in the 2 Paragraph B categories discussed above. Moreover, the ALJ specifically stated that she found the Plaintiff had “some limitations” in these categories, as supported by the Consultative Examination findings. (Doc. 10-1 PageID#51-#52). Despite finding that the Plaintiff had mild mental

limitations in these categories the ALJ did not specify what functional limitations were appropriate and did not assess any mental limitations whatsoever in the RFC. (Doc. 10-1 PageID#53). Moreover, the ALJ did not provide any explanation as to why there are no mental restrictions accounted for in the RFC despite finding that the Plaintiff had mild mental limitations. Thus, the ALJ committed reversible error. See Simon-Leveque, Kelli M., Julie J., Anthony W., Alesia, Paar, and Koswenda, supra.

The Plaintiff was born on May 27, 1957. (Doc. 10-1 PageID#776). As such, he is over 60 years of age. If the ALJ properly factored into the RFC all functional limitations, including all mental limitations, and the Plaintiff was thereby reduced from medium level work to light level work, he would have been found disabled under the GRID Rules. As such, the ALJ's error was prejudicial to the outcome of this case.

Finally, it must be noted that the Plaintiff's mild mental limitations were not incorporated into the hypothetical questions posed to the VE, which is also reversible error. (Doc. 10-1 PageID#90-#91). The law holds that When an ALJ poses a hypothetical question to a vocational expert, the question must include all limitations supported by medical evidence

in the record. See Bayliss v. Barnhart, 427 F.3d 1211, 1217 (9th Cir.2005); Young v. Barnhart, 362 F.3d 995, 1003 (7th Cir.2004); Indoranto v. Barnhart, 374 F.3d 470, 474 (7th Cir.2004).

**B. The District Court erred by failing to recognize the ALJ’s error and by failing to remand the case for further consideration.**

**1. The District Court improperly applied the holdings of *Best v. Berryhill* and *Rice v. Barnhart*. (Dec. P. 3).**

The District Court stated that the ALJ did not err because “the Seventh Circuit has held that there is no error in an RFC assessment when, as here, ‘there is no doctor’s opinion contained in the record [that] indicate[s] greater limitations than those found by the ALJ.’” Citing Best v. Berryhill, 730 F.App’x 380, 382 (7<sup>th</sup> Cir. 2018) and Rice v. Barnhart, 384 F.3d 363, 370 (7<sup>th</sup> Cir. 2004).

The District Court misapplied the holdings of Best and Rice.

First, Best and Rice both related to physical conditions, whereas this case relates to mental conditions. With respect to mental conditions, the law routinely applied states that with respect to mild mental limitations the ALJ must either include functional limitations in the RFC or explain why no such limitations were included. See Simon-Leveque, Kelli M., Julie J., Anthony W., Alesia, Paar, and Koswenda, *supra*. The

District Court did not acknowledge or discuss this body of case law as it applies to the Plaintiff's mild mental limitations.

Second, in Best the Court stated that “no doctor recommended any limitations based on [Best’s neck condition and radiculopathy]”. That is inapposite to the facts in this case where the Consultative Examination results demonstrated that there are, in fact, ***some limitations***. Moreover, the ALJ expressly agreed that the CE supports that there are at least ***some limitations*** to the Plaintiff’s mental functioning. Moreover, in Rice the ALJ crafted the RFC by relying on the opinions of two medical doctors, Drs. Bilinsky and Graham. The Court held that the ALJ was entitled to rely upon their opinions, and despite the Plaintiff’s challenge, the Court noted that there were no other medical opinions contained in the record which indicated greater limitations than those found by the ALJ. However, in this case, the ALJ relied upon the CE to find that the Plaintiff has at least “***some limitations***” in his mental functioning, the ALJ also assessed mild limitations (instead of “no limitations”), but then the ALJ formulated an RFC that contained no mental restrictions whatsoever, and the ALJ also did not explain why no restrictions were included. Thus, the ALJ erred and the District Court



misapplied the holdings in Best and Rice. The facts and holdings in Best and Rice are distinguishable and are not applicable to the facts in this case.

**2. The District Court mischaracterized the evidence by stating that the evidence did not bear out the Plaintiff's allegations of mental restrictions. (Dec. P. 3).**

The District Court also upheld the ALJ's decision because, according to the District Court, the ALJ found that the evidence was insufficient to bear out any restrictions related to the Plaintiff's mental impairments. Specifically, the Court stated, "the ALJ acknowledged Plaintiff's allegations that he could not work because he has problems remembering and thinking clearly, but she said his medical records did not evidence any psychiatric treatment or otherwise bear those allegations out." (Dec. P. 3). The District Court then cited to Rick M. v. Saul, 2021 WL 2588762, at \*5 (NDIL, June 24, 2021), to support the Court's finding that, in this case, the ALJ offered specific reasons and contrary evidence that explain why Plaintiff's medical record did not support incorporating any mental limitations into the RFC. (Dec. P. 3).

The District Court mischaracterized the ALJ's findings. As such, the holding set forth in Rick M. is inapplicable in this case.

When evaluating the Plaintiff's social limitations, the ALJ stated, "[h]is presentation at the consultative examination suggested **some problems in this area**, though given the lack of support in the longitudinal record and his lack of ongoing treatment, the undersigned does not find sufficient basis for more than mild limitation in this area." Then, when evaluating the Plaintiffs limitations in concentration, persistence, and pace, the ALJ stated, "the consultative examination found him to have **some problems with working memory, such as with digit spans**, but the longitudinal record supports no more than mild limitation in this area". (Doc. 10-1 PageID #51-#52).

The ALJ did not find that the allegations of mental restrictions were not supported by the evidence as the District Court states. To the contrary, the ALJ expressly found that there were "some problems" in these categories of mental functioning, as supported by the CE results. In the ALJ's analysis, the ALJ weighed all the evidence, which included the CE results and also the longitudinal medical records. The ALJ found that the CE supported that there were **some limitations** in social functioning and CPP, but that there was lack of support in the longitudinal record. However, because there was **some support** for the

existence of mental limitations, which was ***supported by the CE results***, the ALJ found, ***on balance***, that the Plaintiff had mild limitations in the Paragraph B categories of social interaction and CPP. Thus, the ALJ *did not find* that there were *no limitations*, as the District Court states. To the contrary, the ALJ found that there were at least ***some limitations*** supported by the CE results, which supports a finding that there are mild mental limitations. The ALJ then erred by failing to incorporate any functional limitations in the RFC related to the social limitations and CPP, and also erred by failing to clearly explain why no limitations were included in the RFC. See Simon-Leveque, Kelli M., Julie J., Anthony W., Alesia, Paar, and Koswenda, supra.

**3. The District Court erred by finding that any error is harmless because the Plaintiff failed to identify specific work restrictions that would address his alleged mental limitations. (Dec. P. 3).**

The District Court also found that, if there was an error, any such error was harmless “because Plaintiff did not identify any work restrictions that would address his alleged mental limitations.” (Dec. P. 3). The District Court cited to Jozefyk v. Berryhill, 923 F.3d 492, 498 (7th Cir. 2019) in support of this finding. However, the Court misapplied Jozefyk to this case.

This very same argument for harmless error was raised in the case of Barbara S. v. Kijakazi, 2022 WL 4244306 (SDIN, Sept. 15, 2022). In Barabara, the Plaintiff raised the same issue that exists in this case, which is that the ALJ did not properly consider the Plaintiff's mild mental limitations in the formulation of the RFC. In Defending the case, the Commissioner argued that if there was an error, any such error was harmless. The Court in Barabara found that the Commissioner improperly relied upon Jozefyk v. Berryhill to argue harmless error, which is the exact same case that the Court relies upon support a finding of harmless error in this case. The Court in Barabara held that the facts of Jozefyk are distinguishable from the facts in Barabara's case. In Jozefyk, the ALJ offered specific reasons why the claimant's mild mental limitations only required limited functional limitations in the RFC, and the Seventh Circuit found this explanation adequate. Id. In Barabara's case, however, the ALJ concluded that Barbara had mild limitations in the "paragraph B" criteria areas, included no non-exertional limitations in the RFC that would address these limitations, and provided no explanation as to why no limitations were included in the RFC. Thus, the Plaintiff was not

required to identify the alleged mental limitations that should have been included in the RFC. It was up to the ALJ, in the first instance, to explain whether any mental limitations were to be included or not included in the RFC to account for the Plaintiff's mild mental limitations.

Similarly, in this case, the harm is inherent in the fact that the ALJ failed to account for the Plaintiff's mild mental limitations in the RFC or explain why no such limitations were included. The ALJ's failure to do so is reversible error, and such error was prejudicial to the outcome of the case. The District Court's reliance on Jozefyk to find harmless error was incorrect and contrary to existing case law that is specific to the issue raised in this case. As explained in Barbara, the Plaintiff did not need to show more harm.

### CONCLUSION

For the reasons stated above, Mr. [REDACTED] asks that this Court find that the ALJ and District Court erred and issue an Order that the denial of benefits be vacated and that the claim be remanded back to the Commissioner of the Social Security Administration for further proceedings.

Dated: October 18, 2023  
New York, NY

Respectfully Submitted:

/s/Bryan Konoski

By: Bryan Konoski, Esq.  
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## CERTIFICATE OF SERVICE

I, the undersigned, being sworn, say: I am not a party to the action, am over 18 years of age, and practice law with offices located in New York, NY. On the 18<sup>th</sup> day of October 2023, I served the within **OPENING BRIEF BY APPELLANT AND APPENDIX**, by: electronically filing said documents with the Clerk of the Court through the ECF system, which was then electronically served upon the Defendant through Defendant's Counsel.

Dated: October 18, 2023  
New York, NY

Respectfully Submitted:

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## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of the Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 3,925 words, excluding the parts of the brief exempted by the Federal Rule of Appellate Procedure 32(f). This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced type font using Microsoft word in 14 point font size and Century Schoolbook font style.

Dated: October 18, 2023  
New York, NY

Respectfully Submitted:

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**STATEMENT CONCERNING THE APPENDIX**

Pursuant to Circuit Rule 30(d), I certify that all materials required by Circuit Rules 30 (a) and (b) are included in the attached appendix.

Dated: October 18, 2023  
New York, NY

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