No. 20-1748

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

VICTIM RIGHTS LAW CENTER, EQUAL RIGHTS ADVOCATES; LEGAL VOICE; CHICAGO ALLIANCE AGAINST SEXUAL EXPLOITATION, JANE DOE, an individual by and through her mother and next friend Melissa White;

A

RULE 26.1 DISCLOSURE STATEMENT

Appellants have no parent corporation, and no publicly held corporation owns 10% or more of their stock.!

Fresh Results, LLC v. ASF Holland, B.V.,
921 F.3d 1043 (11th Cir. 2019)

Negrón-Almeda v. Santiago,
528 F.3d 15 (1st Cir. 2008) 14, 27, 32, 34

New York v. U.S. Dep't of Educ.,
No. 1:20-cv-4260 (S.D.N.Y.) 8

Peaje Invs. LLC v. García-Padilla,
845 F.3d 505 (1st Cir. 2017) 34

Pennsylvania v. DeVos,
No. 1:20-cv-1468 (D.D.C.) .... passim

Pennsylvania v. President of the United States,
888 F.3d 52 (3d Cir. 2018) 19

Pub. Serv. Co. of N.H. v. Patch,
136 F.3d 197 (1st Cir. 1998) 19, 20

R&G Mortg. Corp. v. Fed. Home Loan Mortg. Corp.,
584 F.3d 1 (1st Cir. 2009) 1, 30

Rita v. United States,
551 U.S. 338 (2007) 31

Smith v. Casey,
741 F.3d 1236 (11th Cir. 2014) 26

Speech First, Inc. v. Fenves,
No. 19-50529 (5th Cir.) ....

State v. Dir., U.S. Fish & Wildlife Servs.,
262 F.3d 13 (1st Cir. 2001) 23, 24

Supermercados Econo, Inc. v. Integrand Assurance Co.,
375 F.3d 1 (1st Cir. 2004) 30

T-Mobile Ne. LLC v. Town of Barnstable,
969 F.3d 33 (1st Cir. 2020) 19, 20, 23

Top Entm't, Inc. v. Torrejon,
351 F.3d 531 (1st Cir. 2003) 28

Trbovich v. United Mine Workers of Am.,
404 U.S. 528 (1972) 16, 18

Unger v. Arafat,
634 F.3d 46 (1st Cir. 2011) 30

United Guar. Residential Ins. Co. of Iowa v. Phila. Sav. Fund Soc.,
819 F.2d 473 (4th Cir. 1987) 19

United Nuclear Corp. v. Cannon,
696 F.2d 141 (1st Cir. 1982) 19, 20

United States v. Doe,
513 F.2d 709 (1st Cir. 1975) 30

United States v. McKinney,
419 F.2d 1019 (5th Cir. 1970) 30

United States v. Paradise,
480 U.S. 149 (1987) ....

Statutes

20 U.S.C. §1681(a) 2

28 U.S.C. §1291 1

Rules

Fed. R. Civ. P. 24 .... 11, 15, 32

Regulations

34 C.F.R. §106.30 2

34 C.F.R. §106.45 .... 3, 4

85 Fed. Reg. 30026 .... 2, 3, 4, 10

REASONS WHY ORAL ARGUMENT SHOULD BE HEARD

Appellants believe the merits of this appeal are clear, as the district court's conclusory denial of Appellants' motion to intervene—entered before the other parties had even responded to the motion—cannot be affirmed. Appellants also seek a speedy decision that allows them to return promptly to the district court and begin participating in this litigation as parties. But this case is critically important, and this appeal does present a unique application of Rule 24's adequacy requirement (the contours of which has split the circuits). If the Court finds the issues close or believes oral argument would be beneficial, Appellants would appreciate the opportunity to be heard.

JURISDICTION

This Court has appellate jurisdiction under 28 U.S.C. §1291 "because an order denying a motion to intervene is immediately appealable." *R&G Mortg. Corp. v. Fed. Home Loan Mortg. Corp.*, 584 F.3d 1, 7 (1st Cir. 2009). The district court entered a minute order denying Appellants' motion to intervene on July 27, 2020. JA40. Appellants filed

nearly all American colleges and universities receive federal funds, the interpretation and application of Title IX's directives have sweeping importance for higher education.

Recently, the Department of Education promulgated a final rule to regulate

with the opportunity for cross-examination by the parties' advisors. 34 C.F.R. §106.45(b)(6); 85 Fed. Reg. at 30,053–54.

B. Appellants are nonprofits with direct interests in the rule.

Appellants are three nonprofit organizations dedicated to promoting free expression and due process on college and university campuses. All three organizations work directly on issues affected by the Rule, took part in the regulatory process that resulted in the Rule, and have substantial interests in defending the Rule against legal challenges (such as this lawsuit).

The Foundation for Individual Rights in Education (FIRE) is a nonprofit membership organization with approximately 50 employees and a student network with members on campuses throughout the country. FIRE staff work directly with college students and faculty subjected to disciplinary proceedings for engaging in protected First Amendment activity. In cases where disciplinary proceedings threaten to chill unpopular but constitutionally protected speech, FIRE staff educate the accused of their rights and communicate with public-university administrators about their due-process obligations.

reduce the frequency with which universities attempt to punish free speech on sensitive issues of gender and sex and thus allow FIRE to shift its resources to addressing other threats to protected speech on campus. Further, as FIRE does not have enough staff, time, or money to assist every student who approaches it for help, the Rule's procedural protections will free up resources for use in other cases.

In addition to individual disciplinary proceedings, FIRE also devotes considerable staff time and money to educating students about their free-speech and due-process rights through its Student Network. Members of FIRE's Student Network work to promote their own rights as well as the rights of other college students through messaging about the constitutional limits on public universities' authority to punish speech, including speech on gender, sex, and other controversial topics that are sometimes the basis for discipline under university conduct codes that prohibit "sexual harassment," broadly defined. FIRE also spends money preparing printed materials on these issues for e e

additional procedural protections that the Rule would provide. Fewer procedural safeguards will apply to this case if it is not adjudicated under prior university policy rather than the manner required under the Rule. This member of FIRE's Student Network thus stands to lose important procedural protections if a court enjoins

If the Rule withstands legal challenge, schools will bring their policies in line with it, freeing Speech First to spend its resources on other pressing constitutional concerns. And like FIRE, Speech First has student members who have been subject in the past, and could be subject in the future, to Title IX disciplinary proceedings.

C. This litigation begins, Appellants move to intervene, and the district court summarily denies the motion without hearing from the parties.

This case is one of four legal challenges brought against the Rule. Plaintiffs here filed their complaint in the District of Massachusetts on June 10, 2020, and filed an amended complaint (the operative pleading) on July 6, 2020. *See* JA37-38. Similar litigation is proceeding in the Southern District of New York, the District of Maryland, and the District of Columbia. *See New York v. U.S. Dep't of Educ.*, No. 1:20-cv-4260 (S.D.N.Y.); *Know Your IX v. DeVos*, No. 1:20-cv-1224 (D. Md.); *Pennsylvania v. DeVos*, No. 1:20-cv-1468 (D.D.C.).

Plaintiffs in this case are various organizations and students who favor more aggressive disciplinary regimes on campus. Their legal challenges allege that the Rule's use of the *Davis* standard to define "sexual harassment" and its procedural protections for respondents

> are contrary to law and arbitrary and capricious under the Administrative Procedure Act (APA), *see* JA154-57 ¶¶273–82;
>
> exceed the Department's authority under Title IX and violate the Campus Sexual Violence Elimination Act, an amendment to the Clery Act codified at 20 U.S.C. §1092(f), *see* JA80, 92, 157-59 ¶¶71, 92, 283–89;

were promulgated without the process required by the APA, *see* JA159-60 ¶¶290–94; and

violate the Fifth Amendment's equal-protection guarantee, *see* JA160-61 ¶¶295–99.

Plaintiffs seek a judgment declaring the Rule invalid and enjoining its implementation. Among other specific goals, they hope to replace the *Davis* standard with a far more subjective and elastic definition of discriminatory harassment—any "unwelcome conduct of a sexual nature." JA93 ¶95.

Appellants disagree both with Plaintiffs' aims and with their legal theories. Indeed, Appellants believe that Plaintiffs' desired results are *constitutionally prohibited*. Specifically, Appellants believe that any definition of "sexuialBT har58 cm cm o prd0 0.24 12.24 5

of allegations and the opportunity to cross-examine witnesses. *See, e.g.*, FIRE Comment 33, 35.

The Department has notably declined to take these positions. In promulgating the Rule, the Department explained its view that adopting the *Davis* standard "avoid[s] First Amendment concerns," 85 Fed. Reg. at 30,142, because conduct covered by *Davis* does not merit First Amendment protection, *id.* at 30,151 & n.667. But the Department stopped short of expressing agreement with Appellants and other commentators who maintained the inverse proposition, *i.e.*, that expressive conduct *not* covered by *Davis is* protected. *See id.* at 30,140–41 (summarizing relevant comments). So too with the Rule's procedural protections for respondents. While the Department described those protections as "inspired by principles of due process," it made clear that it considers them "independent of constitutional due process" and "distinct from constitutional due process owed by public institutions." *Id.* at 30,100–01.

In short, the Department has maintained only that applying the *Davis* standard is "*consistent* with the First Amendment," *id.* at 30,033 (emphasis added), not

a proposed answer to the amended complaint. *See* Docs. 24–26. Appellants argued for intervention as of right,

intervention under Rule 24(b). The district court's brevity, conclusoriness, failure to disaggregate permissive and as-of-right intervention, and haste in ruling on Appellants' motion—before even hearing from the existing parties—all combine to make its reasons for denying permissive intervention indiscernible. That said, the most natural inference from the court's order is that it simply collapsed the distinction between the two forms of intervention, thus failing to apply the correct Rule 24(b) standard. But even in the best-case scenario where the district court undertook the correct inquiry *sub silentio*, meaningful appellate review requires (at a minimum) vacatur and remand for a more thorough analysis. Appellants have a compelling case for permissive intervention, as the D.D.C. found, and Appellants should not lose their opportunity to intervene in this important lawsuit based on

circumstances." *Cotter*, 219 F.3d at 34. Thus, the standard is not "a rubber stamp, counseling affirmance of every discretionary decision made by a trial court." *Negrón-Almeda v. Santiago*, 528 F.3d 15, 21 (1st Cir. 2008). "To the contrary," a district court abuses its discretion "if it fails to consider a significant factor in the decisional calculus, if it relies on an improper factor in working that calculus, or if it considers all the appropriate factors but makes a serious error in judgment as to their relative weight." *Id.* at 21–22 (citation omitted). And the district court's discretion is still "more circumscribed" when dealing with intervention as of right. *Id.* at 22.

ARGUMENT

The Federal Rules of Civil Procedure adopt a "policy favoring liberal intervention under Rule 24," *In re Thompson*, 965 F.2d 1136, 1143 n.11 (1st Cir. 1992), a policy that has "particular force where the subject matter of the lawsuit is of great public interest, the intervenor has a real stake in the outcome and the intervention may well assist the court in its decision through … the framing of issues," *Daggett*, 172 F.3d at 116–17 (Lynch, J., concurring). Those precise reasons motivate Appellants' proposed intervention here. The Title IX Rule is undoubtedly of great public interest, as are the free-speech and due-process rights of college students. Appellants have a real stake in defending students' rights and the Rule. And, most importantly, Appellants will help frame the issues by defending the Rule on constitutional grounds that no other party will advance.

All this makes an easy case for intervention, which Appellants sought under two distinct provisions of Rule 24. First, Rule 24(a)(2) dictates that district courts "must" allow intervention as of right to "anyone" who (1) files a "timely motion," (2) "claims an interest in or relating to the property or transaction that is the subject of the action," (3) "is so situated that disposing of the action may as a practical matter impair or impede the [intervenor's] ability to protect its interest," and (4) shows that existing parties do not "adequately represent that interest." *See also Conservation Law Found. of New England, Inc. v. Mosbacher*, 966 F.2d 39, 41 (1st Cir. 1992). Second, Rule 24(b) provides that district courts "may" grant permissive intervention to "anyone" who (1) files a "timely motion" and (2) "has a claim or defense that shares with the main action a common question of law or fact." If these "threshold requirement[s]" are met, a district court's prudential

reasoning for even the one finding that it expressed. In fact, the court did not even wait to hear what the existing parties thought of

of different issues and which (if respectively accepted) would result in different judgments with different stare decisis implications.

legal challenges it must face. *See* JA284-90. But that position cuts sharply *against* Appellants' interests. As mission-driven nonprofits dedicated to student rights, Appellants both desire a judgment vindicating the Title IX Rule on the (constitutional) merits, not a procedural ruling, and have an interest in maintaining broad access to judicial review of agency action. That interest is particularly significant here because Plaintiffs' and Appellants' interests in the Rule are the "mirror image" of one another. *Builders Ass'n of Greater Chi. v. City of Chicago*, 170 F.R.D. 435, 440–41 (N.D. Ill. 1996); *compare supra* 4–8, *with* JA66-68, 133-54 ¶¶30–40, 200–72.

That Appellants' and the Department's interests are not coextensive makes the Department not an adequate representative for Appellants. This conclusion follows from *Trbovich*, which held that a union member could intervene in an action brought by the Secretary of Labor to set aside a union election. The Supreme Court reasoned that, while the Secretary was charged with representing the union member's interest in the litigation, he also was charged with protecting the "vital public interest in assuring free and democratic union elections," an interest "

should be entitled to intervene." *United Guar. Residential Ins. Co. of Iowa v. Phila. Sav. Fund Soc.*, 819 F.2d 473, 475 (4th Cir. 1987); *see also Kane County v. United States*, 928 F.3d 877, 895 (10th Cir. 2019); *Mosbacher*, 966 F.2d at 44–45; *Pennsylvania v. President of the United States*, 888 F.3d 52, 61 (3d Cir. 2018). That is the case here.

Significantly divergent litigating positions and strategies weigh against the adequacy of representation, just as an *identity* of arguments and positions weigh *in favor of* adequacy.[2] Indeed, these two truths are simply the two sides of the same legal coin. *See United Nuclear Corp. v. Cannon*, 696 F.2d 141, 144 (1st Cir. 1982) (framing the relevant questions as whether the existing party's and proposed intervenor's interests are "sufficiently similar … that the legal arguments of the latter will undoubtedly be made by the former" and whether the existing party is "capable and willing to make such arguments" (quoting *Blake v. Pallan*, 554 F.2d 947, 954–55 (9th Cir. 1977)). And that

[2] *Compare Cotter*, 219 F.3d at 35–37 (identifying distinct arguments likely to be made by the parties and concluding that "the potential conflict between MAMLEO and the Boston Police Department on how best to defend the consideration of race in

coin comes up on the pro-intervention side here: The Department has already made jurisdictional arguments contrary to Appellants' interests, and it will not make the constitutional arguments Appellants wish to present as the "missing ingredient" in the Department's defense. *T-Mobile Ne.*, 969 F.3d at 40.

Of course, "the use of different arguments … is not inadequate representation *per se.*" *Daggett*, 172 F.3d at 112; *accord Mass. Food Ass'n v. Mass. Alcoholic Beverage Ctrl. Comm'n*, 197 F.3d 560, 567 (1st Cir. 1999). The test naturally turns on the degree of divergence in the arguments and—ultimately—the degree to which they reflect different interests and big-picture objectives. *See Patch*, 136 F.3d at 209; *Cannon*, 696 F.2d at 144; *accord, e.g.*, *Brumfield v. Dodd*, 749 F.3d 339, 346 (5th Cir. 2014) ("The lack of unity in all objectives, combined with real and legitimate additional or contrary arguments, is sufficient to demonstrate that the representation *may* be inadequate"). Here, Appellants disagree *both* with the Department's decision to seek dismissal on jurisdictional grounds *and* with its decision to forgo constitutional merits defenses. And as already explained, those disagreements are directly related to Appellants' and the

887 F.2d at 342.[3] On the contrary, the differences between Appellants and the Department go to the very heart of how to frame and defend this lawsuit and flow from significantly different sets of interests.

This becomes even clearer when considering how Appellants' distinct arguments will shape all issues in this case. *See Daggett*, 172 F.3d at 116–17 (Lynch, J., concurring) (noting the special appropriateness of intervention when it "may well assist the court in its decision through … the framing of issues"). At the outset, Appellants (because they are similarly situated to Plaintiffs w

constitutionally valid," the existing governmental party "merely [sought] to defend the present suit and would accept a procedural victory").

To be sure, in some cases

mean that the presumption does not apply under this Court's precedents, and the shaky doctrinal foundation for the presumption provides a compelling additional reason not to extend it to the present situation.

Even if the presumption applied, moreover, Appellants can overcome it. "'Presumption' means no more in this context than calling for an adequate explanation as to why what is assumed—here, adequate representation—is not so." *U.S. Fish & Wildlife*, 262 F.3d at 19. Appellants have amply explained how their interests and the Department's interests diverge, how those distinct interests inform their distinct theories and litigation strategies, how those distinct theories will shape the issues presented in this lawsuit, and how this all may impact the court's ultimate rationale (with corresponding stare decisis implications). Rule 24(a)(2) requires no more. Indeed, it requires less. *See Mosbacher*, 966 F.2d at 44 ("An intervenor need only show that representation may be inadequate, not that it is inadequate.").

Finally, that the Department did not oppose Appellant's motion to intervene is telling. Although the district court entered its order before receiving a response, the Department has declined to take a position on Appellants' intervention as of right and has consented to Appellants' permissive intervention in the parallel cases. *Know Your IX*, Doc. 25 (filed July 6, 2020); *Pennsylvania*, Doc. 48 (filed July 1, 2020). Where the government consents to or does not oppose intervention, its "candor" is evidence that it does not adequately represent the intervenors' "special interests." *Mosbacher*, 966 F.2d at 44; *accord Utah Ass'n of Cntys. v. Clinton*, 255 F.3d 1246, 1256 (10th Cir. 2001). The

v. Foley Hoag LLP Ret. Plan, 521 F.3d 60, 64 (1st Cir. 2008). Appellants claim concrete interests in the Rule's validity that are the mirror image of Plaintiffs' interests in its alleged invalidity. *Compare supra* 4–8, *with* JA66-68, 133-54 ¶¶30–40, 200–72. And disposing of this action obviously may affect Appellants' interests because, if Plaintiffs prevail, universities will apply more expansive harassment definitions and weaker procedural protections than permitted by the Rule, injuring Appellants' organizational and student-member interests. *See Cotter*, 219 F.3d at 37 (holding this element satisfied based on the consequences "if plaintiffs prevail[ed]").

In any event, appellate courts are generally "reluctant" to consider issues not ruled on—or in this instance, even briefed—in the trial court. *Hochendoner v. Genzyme Corp.*, 823 F.3d 724, 735 (1st Cir. 2016). That is especially true where those issues properly belong to the district court's sound discretion and "feel of the case." *Int'l Paper Co.*, 887 F.2d at 344 (cleaned up); *see, e.g.*, *Smith v. Casey*, 741 F.3d 1236, 1243 n.7 (11th Cir. 2014) ("With respect to a decision we would review only for an abuse of discretion, we generally decline to substitute our judgment about the matter when the district court has not yet decided it and leave the decision for the district court to make in the first instance."). Accordingly, Appellants do not focus on the other requirements for intervention as of right in this appeal.

II. Even if the district court's adequacy ruling were correct, it would not support the denial of permissive intervention.

Even if this Court were to affirm the district court's adequacy ruling (and consequently its denial of intervention as of right), the Court should still remand for further proceedings on permissive intervention. The district court's minute order offers no meaningful insight into why it denied permissive intervention, and, to the extent the Court can divine the district court's reasoning, the district court either misapprehended the relevant legal standard or "fail[ed] to consider … significant factor[s] in the decisional calculus." *Negrón-Almeda*, 528 F.3d at 21. Any of these possibilities calls for a remand. *See id.*; *Daggett*, 172 F.3d at 113–14 (vacating and remanding because it was "unclear" whether the district court applied an incorrect standard).

Again, Rule 24(a)(2) and Rule 24(b) provide different avenues for intervention, with different standards. Whereas intervention as of right depends on four discrete, circumscribed elements, permissive intervention encompasses any "rationally relevant" consideration provided that the "threshold requirement[s]" of timeliness and a common question are met. *Daggett*, 172 F.3d at 113.

Despite these markedly different standards, the district court did not separately address permissive intervention and relied on its adequacy determination alone in denying Appellants' entire motion. But of course, adequate representation does not have anything close to the same importance for permissive intervention as for intervention as of right—for the latter, it is an ironclad requirement, whereas for the

former it is at most one factor among indefinitely many. So how should this Court interpret the minute order's denial of permissive intervention? There are four basic possibilities, none of which counsels affirmance.

First, it is possible that the district court simply overlooked Appellants' arguments for permissive intervention. While Appellants would not necessarily jump to this conclusion, it cannot be confidently ruled out. After all, courts do occasionally overlook arguments by inadvertence. *See, e.g.*, *Johnson v. Williams*, 568 U.S. 289, 302 (2013) (rejecting as factually inaccurate "an irrebuttable presumption that state courts never overlook federal claims"). And it is impossible to imagine how the minute order would look any different if the district court had done so here.

Second

had a single question to answer, and that a single consideration answered that question in its entirety.

If that is what the district court thought, then it plainly misunderstood the legal standard and thus abused its discretion. *See Top Entm't, Inc. v. Torrejon*, 351 F.3d 531, 533 (1st Cir. 2003) ("[A] legal error … is by definition an abuse of discretion."). Indeed, in this scenario, the district court would have failed to exercise its Rule 24(b) discretion at all. The whole point of permissive intervention is that intervention is sometimes appropriate even when one or more requirements for intervention as of right are lacking. *See Daggett*, 172 F.3d at 113 ("The fact that the district court was not required to allow intervention does not mean that it was forbidden from doing so."). Otherwise, Rule 24(b) would be meaningless. *See Solid Waste Agency of N. Cook Cty. v. U.S. Army Corps of Engineers*, 101 F.3d 503, 509 (7th Cir. 1996) (remanding because the district court "failed to exercise his discretion" by "[m]isconceiving the applicable standard" for permissive intervention by relying solely on a requirement for intervention of right).

The third possibility is that the district court both understood the all-things-considered analysis it was required to conduct and concluded that the same unspecified considerations that made the Department's representation adequate also decisively weighed against permissive intervention. This is the most generous possible reading of the minute order, as it manages to connect the order's sole stated reason to the appropriate legal standard.

Unfortunately, the problems with this theory are manifold. As an initial matter, even if such reasoning does not *formally* collapse the distinction between as-of-right and permissive intervention, it comes perilously close to doing so in practice. But more importantly, there is simply no reason to think that it reflects the district court's actual rationale. Abuse-of-discretion review "necessarily entails consideration of the reasons

for a more complete explanation that will enable meaningful review. *Daggett*, 172 F.3d at 113.[4]

Here, it is certainly "unclear" that the district court conducted an appropriate discretionary analysis of permissive intervention. As already explained, the most natural reading of the minute order is that the district court did not distinguish between the two forms of intervention

Plaintiffs might present on appeal. *See Rita v. United States*, 551 U.S. 338, 356 (2007) (explaining, in the context of discussing meaningful appellate review of sentencing discretion, that a district court may sometimes "rely[] upon context and the parties' prior arguments to make [its] reasons clear" to the reviewing court). There were no such arguments before the district court.

Further, even if this Court could infer that the district court applied the right general standard and exercised its discretion in some fashion, the contours of the district court's thinking are still too opaque for meaningful appellate review. Specifically, it is impossible to tell whether the district court "fail[ed] to consider … significant factor[s] in the decisional calculus" or made "serious error[s] in judgment as to their relative weight." *Negrón-Almeda*, 528 F.3d at 21–22

That this case has

The answers to these questions are completely unknowable, and any attempt to answer them would be sheer guesswork. This is not a case where, "[d]espite limited analysis by the district court," this Court can use common sense and the record to triangulate "the view of the district court" or pinpoint the considerations that "apparently weighed heavily in the district court's mind." *Caterino v. Berry*, 922 F.2d 37, 40–42 (1st Cir. 1990);

There is also a fourth and last possibility: that the district court denied permissive intervention for reasons unrelated to representational adequacy, and entirely failed to record those reasons. The previous arguments about ensuring meaningful appellate review apply most strongly to this possibility.

In sum, the distri (i) 12risu24 12.24 590.226T 0.0024 Tc 9-2 (ta) -1 (tio) T) T) T

Dated: October 4, 2020

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Rule 32(a)(7)(B) because it contains 9,070 words, excluding the parts that can be excluded. This brief also complies with Rule 32(a)(5)-(6) because it has been prepared in a proportionally spaced face using Microsoft Word 2016 in 14-

CERTIFICATE OF SERVICE

I filed this brief via the Court's ECF system, which will electronically notify all counsel requiring notice.

Dated: October 4, 2020 *<u>/s/ Cameron T. Norris</u>*

ADDENDUM

Order Appealed From .... Add. 1

!

website at www.ca1.uscourts.gov
briefs, including a checklist of what your brief must contain.

Failure to file a brief in compliance with the federal and local rules will result in the issuance of an order directing the party to file a conforming brief and could result in the appellee not being heard at oral argument. See 1st Cir. R. 3 and 45.

Maria R. Hamilton, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT
John Joseph Moakley
United States Courthouse
1 Courthouse Way, Suite 2500
Boston, MA 02210
Case Manager: Gloria - (617) 748-4214

cc:
Alexa R. Baltes
Brian W. Barnes
Charles J. Cooper
Linda M. Correia
David Hinojosa
Lauren A. Khouri
Donald Campbell Lockhart
Emily Martin
Nicole J. Moss
Gregory Francis Noonan
Cameron Thomas Norris
Oren McCleary Sellstrom
Matthew S. Shapanka
James Reid Sigel
Patrick N. Strawbridge
Elizabeth Tang