**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

| | |
|---|---|
| Vanessa CROWE and Glen GALEMMO, *individually and on behalf of all others similarly situated*<br><br>*Plaintiffs*,<br><br>v.<br><br>FEDERAL BUREAU OF PRISONS, *et al.*,<br><br>*Defendants*. | No. 1:24-cv-3582 (APM) |

**PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL**

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### CASES

**STATUTES**



**RULES**

## INTRODUCTION

The First Step Act of 2018 requires the Bureau of Prisons ("BOP") to transfer people out of prison and into prerelease custody or supervised release when they become eligible under the statute. Yet the BOP is systematically failing to do so, causing thousands of people to be unlawfully overheld in prison. This case is a quintessential Rule 23(b)(2) class action: Plaintiffs seek to represent other individuals who are suffering or will suffer the *same* injury (being overheld in prison), caused by the *same* act (the BOP's systemic failure to transfer people when they become eligible, in violation of the First Step Act), and remediable by the *same* injunctive and declaratory relief (ordering Defendants to follow the law and transfer eligible people out of prison).

As detailed in Plaintiffs' class certification motion, ECF 2, the proposed class satisfies all the requirements of Rule 23(a) and 23(b)(2). Defendants do not dispute that the proposed class satisfies Rule 23(a)'s numerosity and adequacy requirements, and they do not object to the appointment of Plaintiffs' counsel as class counsel. *See* ECF 40 (Defs.' Opp'n) at 9 n.3. Instead, they contest the merits of Plaintiffs' underlying claims—which the Supreme Court has admonished is not a basis to deny class certification—and misconstrue those claims. This Court should reject Defendants' arguments and certify the proposed class.

*First*, Defendants' argument that the class cannot be certified because Plaintiffs do not have standing ignores key facts and well-established precedent. As Plaintiffs have explained, they had standing when they filed this case because they faced a substantial risk that the BOP would fail to comply with the law and cause them the harm of being overheld in prison.

*Second*, Defendants' arguments regarding commonality and typicality rely on hypothetical factual differences among putative class members that are irrelevant to class certification. None of these hypothetical differences has any bearing on the antecedent, central, common question in

this case: Whether the First Step Act requires the BOP to transfer eligible people out of prison no later than the date upon which their earned time credits equal the remainder of their sentences.

*Third*, Defendants' argument that they have not deliberately and systemically failed to comply with the First Step Act is belied by the facts: the BOP's policy of not applying First Step Act Earned Time Credits as required by law is evidenced both in the regulation and in the BOP's self-confessed practice of not transferring eligible people at the statutorily prescribed time. Courts have consistently held that "commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members." *Thorpe v. District of Columbia,* 303 F.R.D. 120, 147 (D.D.C. 2014) (internal quotations and citations omitted).

*Fourth*, Defendants' claim that there is no class-wide injury fundamentally misconstrues Plaintiffs' case. Plaintiffs have shown that the BOP is "act[ing] . . . on grounds that apply generally to the class," Fed. R. Civ. P. 23(b)(2), by implementing and enforcing a policy of not applying First Step Act Earned Time Credits as required by law. The BOP's policy and practice threatens all proposed class members with the same injury—being overheld in prison—and can be remedied by a single injunction and declaratory judgment.

For those reasons, the Court should certify the proposed class of "[a]ll incarcerated people who have earned or will earn time credits under the First Step Act, who meet or will meet the prerequisites for prerelease custody in 18 U.S.C. § 3624(g)(1), and who have not been or will not be moved out of prison on or before the date when their time credits equal their remaining sentences." ECF 2 (Mot. for Class Certification) at 1.

## ARGUMENT

### I. Plaintiffs Had Standing Because They Faced a Substantial Risk that the BOP Would Not Transfer Them from Prison by Their Statutorily Mandated Transfer Dates.

Defendants start by recycling arguments from their last brief, ECF 34, arguing here as they did there that this Court lacks jurisdiction because Plaintiffs lack standing. *See* ECF 40 (Defs.' Opp'n) at 7–8. As Plaintiffs have explained thoroughly, ECF 41, Plaintiffs had standing when they filed this case and Defendants' arguments to the contrary fail. *Id.* at 5–10. To avoid repetition, Plaintiffs respectfully refer the Court to their opposition to Defendants' motion to dismiss and reply in support of Plaintiffs' motion for preliminary injunction ("opposition"), *id.*, and incorporate by reference the arguments made there.

In sum, Plaintiffs had standing because when they filed the complaint, there was a substantial risk that the BOP would not transfer them to prerelease custody when their First Step Act time credits would equal the days remaining on their sentences (their "equal-to dates"). Indeed, the BOP specifically told Plaintiffs they would not be transferred on their equal-to dates. *See* ECF 41 (Pls.' Mot. to Dismiss Opp'n and Prelim. Inj. Reply) at 7. That "substantial risk" established standing. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014). What's more, the BOP's subsequent actions confirmed how substantial the risk was: the BOP in fact did not transfer Ms. Crowe on her equal-to date. Standing is no barrier to this case proceeding, and no barrier to class certification.

### II. The Proposed Class Satisfies Rule 23(a)'s Commonality and Typicality Requirements.

The proposed class satisfies Rule 23(a)'s commonality and typicality requirements because the putative class members' claims "depend upon a common contention" that is "of such a nature that it is capable of class-wide resolution." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350

(2011). Specifically, their claims depend on the common contention that the BOP is violating the First Step Act by failing to transfer people out of prison when they become eligible. This common contention is capable of class-wide resolution: Due to the BOP's common policy and practice (systemic failure to transfer people when they become eligible, in violation of the First Step Act), putative class members are suffering or will suffer the same injury (being overheld in prison) that is remediable by uniform equitable relief (ordering Defendants to follow the law and transfer eligible people into prerelease custody when required).

Defendants contend that the proposed class does not satisfy commonality and typicality mainly because, in their view, they will win on the merits of Plaintiffs' underlying claims. *See* ECF 40 (Defs.' Opp'n.) at 10. The Supreme Court has rejected this approach to the class certification analysis. Commonality requires at least one common question, "not that th[e] question[] will be answered, on the merits, in favor of the class." *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 459 (2013). Put differently, "the class certification hearing is not a dress rehearsal of the trial on the merits." *Parsons v. Ryan*, 754 F.3d 657, 689 n.35 (9th Cir. 2014) (rejecting the argument that commonality was not satisfied because of alleged differences in the facts and circumstances of each case and affirming certification of a class of incarcerated people). What matters is that when the Court reaches the merits, the claims of the whole class will rise or fall together. Here, Plaintiffs' claims and those of the putative class will rise or fall together based on one question: Does the First Step Act require the BOP to transfer people out of prison when their earned time credits equal the remaining time on their sentences? The Court's answer to this "common contention" is "central to the validity of" all their claims. *Wal-Mart*, 564 U.S. at 350.

**A. Defendants' arguments regarding differences among putative class members fail because they incorrectly rely on the *TRAC* test, which does not apply here.**

Defendants' arguments fail from the start because they are based on the false premise that the six-factor test in *Telecommunications Research and Action Center v. F.C.C.*, 750 F.2d 70 (D.C. Cir. 1984) ("*TRAC*") applies here. Defendants contend that "putative class members' claims are not amenable to class-wide resolution" because "the central issues to the *TRAC* analysis—namely, how long any delay was and why it occurred—turn on prisoner-specific considerations." ECF 40 (Defs.' Opp'n) at 10–11. As in their last brief, ECF 34, Defendants' argument that *TRAC* applies stems from their misconception that Plaintiffs are challenging "delayed transfers" through an unreasonably delayed agency action claim. ECF 40 (Defs.' Opp'n) at 10. If that were so, such a claim *would* trigger the application of the six-factor *TRAC* test.

But for the reasons Plaintiffs have explained in detail, ECF 41, Plaintiffs are not challenging "delayed transfers" or "unreasonably delayed" agency action. *See id.* at 38–41. They are challenging "agency action unlawfully withheld," 5 U.S.C. § 706(1), to which *TRAC* does not apply. *See* ECF 41 (Pls.' Mot. to Dismiss Opp'n and Prelim. Inj. Reply) at 38–41. Again, to avoid repetition, Plaintiffs respectfully refer the Court to their opposition, *id.*, and incorporate those arguments by reference. In short, Plaintiffs' claims are centered on the BOP's failure to transfer people to prerelease custody when the law requires, not delaying their transfer in the absence of such a deadline. This claim that the BOP is violating a "deadline or duty," *Friends of The Earth, Bluewater Network Div. v. U.S. Dep't of Interior*, 478 F. Supp. 2d 11, 25 (D.D.C. 2007), constitutes agency action "unlawfully withheld," 5 U.S.C. § 706(1).

Three circuit courts have held that *TRAC* does not apply to "unlawfully withheld" claims. *See South Carolina v. United States*, 907 F.3d 742, 760–61 (4th Cir. 2018); *Biodiversity Legal Found. v. Badgley*, 309 F.3d 1166, 1177 n.11 (9th Cir. 2002); *Forest Guardians v. Babbitt*, 174

F.3d 1178, 1190–91 (10th Cir. 1999). Defendants have not offered a single circuit court case holding otherwise.

*None* of the cases Defendants cite involve unlawfully withheld agency action claims rather than unreasonably delayed agency action claims. *See* ECF 40 (Defs.' Opp'n) at 10–11. One of the cases, *Casa Libre/Freedom House v. Mayorkas*, involved a statutory deadline, but the plaintiffs did not challenge unlawfully withheld agency action and instead styled their claim as a challenge to "routine[] *delay[s]*." No. 2:22-cv-01510, 2023 WL 3649589 at *3 (C.D. Cal. May 25, 2023) (emphasis added); *see Casa Libre/Freedom House*, 2023 WL 4872892, at *4 (C.D. Cal. July 31, 2023) (referring to Plaintiffs' claim as "the 'routine delay claim,' in accord with Plaintiffs' own allegations."). The court relied on the fact that neither party suggested there was an agency policy permitting action beyond the statutory deadline, and emphasized that "the salient issue" in that case was not whether the agency had met the deadline, but "whether, in light of the statutory deadline and other relevant factors, [the agency's] adjudication was *unreasonably delayed*." 2023 WL 3649589 at *12 (emphasis added). Defendants' other cases are also easily distinguishable. *Lightfoot v. District of Columbia.*, 273 F.R.D. 314, 328 (D.D.C. 2011), and *Rud v. Johnston*, No. CV 23-0486, 2023 WL 6318615, at *10 (D. Minn. Sept. 28, 2023) involved due process challenges, not APA claims, and did not even mention *TRAC*. The remaining three cases, in which courts did apply *TRAC*, were explicit "unreasonably delayed" cases where there was no statutory deadline. *Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 336 F.3d 1094, 1097 (D.C. Cir. 2003); *Martin v. O'Rourke*, 891 F.3d 1338, 1345–46 (Fed. Cir. 2018); *LaMarche v. Mayorkas*, No. 23-30029, 2024 WL 2502929, at *1 (D. Mass. May 22, 2024).

The Court should disregard Defendants' arguments that stem from the faulty premise that *TRAC* applies here. Indeed, if *TRAC* has any relevance here, it is that it presents yet another legal

question common to the class—whether *TRAC* applies. *Cf.* ECF 2 (Mot. for Class Certification) at 14 (identifying "key legal issues in common," including whether the BOP is violating the First Step Act and whether the BOP's regulation is a final agency action). And even if this Court were to hold that *TRAC* applies to Plaintiffs' APA claims, there is no dispute it does *not* apply to their inherent equitable power claims.

Plaintiffs have demonstrated that commonality and typicality are satisfied.

**B. In any event, Defendants' arguments regarding differences among putative class members are irrelevant**.

Irrespective of *TRAC*, Defendants' arguments regarding differences among putative class members are unavailing. As Plaintiffs noted in their motion for class certification, ECF 2 at 19, "where 'plaintiffs allege widespread wrongdoing by a defendant,' as in civil rights cases challenging institutional wrongdoing, they can establish commonality notwithstanding individual factual variations by identifying a 'uniform policy or practice that affects all class members.'" *DL v. District of Columbia*, 302 F.R.D. 1, 12 (D.D.C. 2013), *aff'd*, 860 F.3d 713 (D.C. Cir. 2017) (quoting *DL v. District of Columbia*, 713 F.3d 120, 128 (D.C. Cir. 2013)). Indeed, "factual variations among the class members will not defeat the commonality requirement, so long as a single aspect or feature of the claim is common to all proposed class members." *Bynum v. District of Columbia*, 214 F.R.D. 27, 33 (D.D.C. 2003) (certifying over-detention class even though class members were being over-detained for different periods of time); *see also Davis v. U.S. Parole Comm'n*, No. 1:24-cv-01312, 2025 WL 457779, at *8 (D.D.C. Feb. 11, 2025) (certifying class where plaintiff challenged defendants' systemic failure to provide accommodations in violation of the Rehabilitation Act even though each class member might require a different accommodation for their specific disability).

Defendants' arguments regarding individualized variations are therefore irrelevant. Defendants' excuses for their failure to transfer people out of prison by their equal-to date do not change the fact that their failure violates the law. Their contention, for example, that some putative class members were not transferred because of a "practice of calculating time credits as of the date of the referral," and some were not transferred because of "individualized considerations rendering transfer to prerelease custody unavailable at the time the prisoner was first eligible," ECF 40 (Defs.' Opp'n) at 11–12, do not matter. Those factors are irrelevant to the common claim that the BOP is violating the First Step Act by failing to transfer people out of prison when they become eligible—full stop.

## III. The Proposed Class Satisfies Rule 23(b)(2)'s Requirements.

The proposed class also satisfies Rule 23(b)(2), because the BOP's unlawful actions "apply generally to the class" such that relief here "is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2).

Defendants' arguments to the contrary misconstrue Plaintiffs' claims. First, their argument that the class is not cohesive again relies on *TRAC, see* ECF 40 at 13–14, which, for the reasons provided above, is inapplicable here. *See supra* Section II(A). The proposed class plainly is cohesive. Determining whether the BOP is violating the First Step Act by failing to transfer eligible people from prison does not require any individualized inquiries; it requires analyzing the plain text of the statute. To the extent that Defendants contend transfer to prerelease custody requires consideration of individual factors, that argument is not inconsistent with Plaintiffs' allegations, nor with certifying the class. Plaintiffs do not challenge any individual transfer decisions; they challenge the BOP's across-the-board failure to transfer people out of prison by their equal-to date. *See e.g.*, ECF 1 (Compl.) at ¶ 49; ECF 41 (Pls.' Mot. to Dismiss Opp'n and

Prelim. Inj. Reply) at 21–22. None of Defendants' arguments "change[] the fundamental reality that class certification in this case provides Plaintiffs with an opportunity to establish entitlement to injunctive relief with respect to the class as a whole in a single unitary trial." *Parsons v. Ryan*, 289 F.R.D. 513, 526 (D. Ariz. 2013), *aff'd*, 754 F.3d 657 (9th Cir. 2014) (internal quotations and citations omitted).

Defendants' claim that a single injunction would not apply to the proposed class fails for similar reasons. Defendants rely on their purported need to "consider a host of prisoner-specific factors" when making prerelease custody decisions. ECF 40 (Defs.' Opp'n) at 14. But Plaintiffs' challenge does not concern *where*—in home confinement or which specific halfway house—the BOP transfers people. Defendants can take the factors they identify into account when deciding *where* to transfer eligible people, and Defendants can continue to do so after this Court issues a single injunction requiring them to transfer people when they become eligible. As Plaintiffs explained in their opposition, ECF 41 at 43–45, the "statutory purposes of prerelease custody" that Defendants rely on to justify holding people in prison past their equal-to dates, ECF 40 (Defs.' Opp'n) at 14, are nowhere in the First Step Act. And to the extent Defendants rely on individualized determinations about whether transfer is "possible" based on "capacity" concerns, ECF 40 (Defs.' Opp'n) at 14, that argument also fails because the First Step Act contains no exceptions for capacity limitations. To the contrary, Congress specifically commanded that "the Director of the Bureau of Prisons *shall ensure* there is sufficient prerelease custody capacity to accommodate *all eligible prisoners*." 18 U.S.C. § 3624(g)(11) (emphasis added).

Defendants' argument is not supported by *Money v. Pritzker*, in which both sides recognized "[t]he imperative of individualized determinations." 453 F. Supp. 3d 1103, 1128 (N.D. Ill. 2020). The crux of the issue in *Money* was that there was no standard for relief, thus making

individualized determinations necessary to assess who was even eligible and what kind of relief, if any, was warranted. *Id.* But here, no individualized consideration is required to decide *whether* a person should be transferred to prerelease custody under the First Step Act: The law mandates such transfer when the person becomes eligible. And in fact, people can achieve statutory eligibility only after the BOP has already conducted an individualized review. For example, people are not eligible for mandatory transfer until the BOP classifies them "to be a minimum or low risk to recidivate pursuant to the last 2 reassessments." 18 U.S.C. § 3624(g)(1)(D)(I). Thus, the individualized consideration that precluded uniform relief and class certification in *Money* is not at issue here. The Court can grant uniform relief to statutorily eligible people.

Defendants' remaining arguments are unavailing. Their contention that a single injunction "likely would create conflicts among the interests of putative class members," ECF 40 (Defs.' Opp'n) at 16, lacks support and defies common sense. Plaintiffs do not seek to have the BOP "transfer prisoners immediately to any [halfway house] with an available bed." *Id.* The BOP has discretion over *where* in prerelease custody it transfers a person. ECF 41 (Pls.' Mot. to Dismiss Opp'n and Prelim. Inj. Reply) at 17–21. If the BOP's prerelease capacity does not meet its current needs, the Director is violating the First Step Act's mandate (from *over six years ago*) to "ensure . . . sufficient prerelease capacity to accommodate all eligible prisoners." 18 U.S.C. § 3624(g)(11). The violation of one statutory mandate is not a valid excuse to violate another statutory mandate. Moreover, the purely speculative possibility that the BOP may place people in halfway houses in less geographically desirable locations does not present a conflict of interest among putative class members: They all have a common interest in not being overheld in federal prison, which is the subject of this case.

Defendants' argument in a footnote that the Court "would still need to review the standing of each member of the class who seeks injunctive relief at the remedy stage" is also misplaced. ECF 40 (Defs.' Opp'n) at 16 n.5. Defendants cite *TransUnion v. Ramirez LLC*, 594 U.S. 413 (2021), which involved a Rule 23(b)(3) class and where the Court held that in order to obtain relief *after a trial* and at the time of post-trial judgment, "[e]very class member must have Article III standing *in order to recover individual damages*." *Id*. at 431 (emphasis added). The *TransUnion* holding is doubly inapposite here. First, it has nothing to do with the well-settled rule that in a Rule 23(b)(2) case, the proper standing inquiry at the time of class certification focuses only on the standing of the named plaintiffs. *See J.D. v. Azar*, 925 F.3d 1291, 1323–24 (D.C. Cir. 2019) (affirming class certification and observing that in a (b)(2) case "it is immaterial that other plaintiffs might be unable to demonstrate their own standing," so long as "[a]t least one plaintiff—and only one plaintiff—[has] standing to seek each form of relief requested in the complaint,") (internal quotations and citations omitted). Second, the Court in *TransUnion* expressly declined to address "the distinct question whether every class member must demonstrate standing *before* a court certifies a class." 594 U.S. at 431 n.4. Thus, even if the holding in *TransUnion* were to apply to injunctive relief class actions—a dubious principle for which Defendants have not cited a single case—it is irrelevant to the current stage of these proceedings *before* a class has been certified.

Defendants also complain that Plaintiffs' proposed class is "substantially overbroad" because it includes future members, but classes that gain and lose members are common in (b)(2) class actions. *See, e.g.*, *Davis*, 2025 WL 457779, at *8 (ordering certification of a class consisting "of all people with a disability who are on *or will be* on parole or supervised release . . . and who need accommodations to have an equal opportunity to succeed on parole or supervised release.")

(emphasis added); Final Order of Approval of Settlement at 2, *LaShawn A. v. Bowser*, No. 1:89-cv-1754 (D.D.C. June 1, 2021), ECF 1222 (approving settlement in class action certified in 1990 involving injunctive relief for children in D.C. foster care, where class definition included children who were not yet in D.C.'s foster-care custody but were "at risk" of being so, and no members of the class when the case finally settled had even been born when class was originally certified); *Loomis v. Exelon Corp.*, No. 06C4900, 2007 WL 2060799, at *5 (N.D. Ill. June 26, 2007) (noting that "future class members are often included in class definitions" and that "the inclusion of future class members is particularly appropriate here because Plaintiffs request an injunction prohibiting the continuation of current practices; and this injunctive relief, if granted, would affect not just present participants, but future participants, as well").

Finally, Plaintiffs seek injunctive relief to ensure class members will be transferred from prison on time. Defendants argue that such relief would be a vague and impermissibly broad form of programmatic relief. *See* ECF 40 (Defs.' Opp'n) at 16–17 n.6. But this case is nothing like the cases cited by Defendants. *See Shook v. Bd. of Cnty. Comm'rs of Cnty. of El Paso*, 543 F.3d 597, 604, 608 (10th Cir. 2008) (affirming that Rule 23(b)(2) was not met because plaintiffs sought "an injunction ordering a wide range of behavior conformed to an essentially contentless standard, bounded only by reference to ambiguous terms like 'reasonable' behavior or 'adequate' treatment"); *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 59 (2004) (reasoning that statutory requirement to manage lands "in a manner so as not to impair the suitability of such areas for preservation as wilderness" was not a sufficiently defined standard to permit APA unlawfully withheld claim) (internal quotations and citations omitted); *Citizens for Resp. & Ethics in Washington v. U.S. Dep't of Homeland Sec.*, 507 F. Supp. 3d 228, 233–34 (D.D.C. 2020) (finding

plaintiffs did not plausibly allege that an agency's failure to create certain documents violated the APA's arbitrary and capricious prohibition).

Plaintiffs have satisfied Rule 23(b)(2)'s requirements.

## CONCLUSION

For the foregoing reasons, the Court should certify the proposed class and appoint Plaintiffs' counsel as class counsel.

[signatures on following page]

Dated: March 19, 2025

Respectfully submitted,

*/s/ Elizabeth Henthorne*
Elizabeth Henthorne (D.C. Bar No. 1562688)
Brantley A. Butcher (D.C. Bar No. 90029703)
JENNER & BLOCK LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001
(202) 637-6367
bhenthorne@jenner.com
bbutcher@jenner.com

Julius Mitchell* (D.C. Bar No. 1671322)
JENNER & BLOCK LLP
1155 6th Avenue
New York, NY 10036
(212) 891-1600
julius.mitchell@jenner.com

*/s/ Julian Clark*
Julian Clark* (NY Bar No. 5824180)
Emma A. Andersson* (CA Bar No. 260637)
American Civil Liberties Union Foundation
125 Broad St. – 18th Floor
New York, NY 10004
(212) 549-2500
eandersson@aclu.org
jclark@aclu.org

*/s/ Aditi Shah*
Aditi Shah**
Arthur B. Spitzer (D.C. Bar No. 235960)
Scott Michelman (D.C. Bar No. 1006945)
American Civil Liberties Union Foundation
of the District of Columbia
529 14th Street NW, Suite 722
Washington, D.C. 20045
(202) 457-0800
ashah@acludc.org
aspitzer@acludc.org
smichelman@acludc.org

**Admitted pro hac vice.*

***Admitted pro hac vice; not admitted in DC; practice limited to matters before federal courts and District of Columbia agencies.*

*Attorneys for Plaintiffs and the Proposed Class*[†]

[†] Counsel wish to acknowledge the assistance of paralegal Clio Gates in the preparation of this brief.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on the 19th day of March, 2025, I caused the foregoing to be electronically filed with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record, in compliance with Federal Rule of Civil Procedure 5(b)(2)(E).

By: */s/ Julian Clark*
Julian Clark