No. 24-_____

In the United States Court of Appeals for the Fifth Circuit

In re Chamber of Commerce of the United States of America; Fort Worth Chamber of Commerce; Longview Chamber of Commerce; American Bankers Association; Consumer Bankers Association; Texas Association of Business,

Petitioners.

On Petition for a Writ of Mandamus to the
United States District Court for the
Northern District of Texas, Fort Worth Division
No. 4:24-cv-00213-P

EMERGENCY PETITION FOR WRIT OF MANDAMUS AND ADMINISTRATIVE STAY OF TRANSFER

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CERTIFICATE OF INTERESTED PERSONS

,

No. 24-_____

The undersigned counsel of record 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. Chamber of Commerce of the United States;
2. Fort Worth Chamber of Commerce;
3. Longview Chamber of Commerce;
4. American Bankers Association;
5. Consumer Bankers Association;
6. Texas Association of Business;
7. Consumer Financial Protection Bureau;
8. Rohit Chopra, in his official capacity as Director of the Consumer Financial Protection Bureau;
9. Paul Hastings LLP, counsel for Petitioners; and
10. Cantey Hanger LLP, counsel for Petitioners.

/s/ *Michael Murray*
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TABLE OF CONTENTS

Page

Statement of Relief Sought 1

Issue Presented 2

Introduction and Nature of Emergency 2

Statement of Relevant Facts 4

Reasons for Granting the Writ 10

I. Petitioners have no other adequate means of relief. 11

II. Petitioners have a clear and indisputable right to the writ. 11

A. Petitioners filed suit in a proper venue 13

B. Public interest factors 16

C. Private interest factors 19

D. Good cause 23

III. Petitioners have shown that a writ is appropriate under the circumstances. 24

Conclusion 25

TABLE OF AUTHORITIES

Page(s)

Cases

Cheney v. U.S. Dist. Court, 542 U.S. 367 (2004) 11, 24

Chicago, Rock Island & Pacific R.R. Co. v. Igoe, 220 F.2d 299 (7th Cir. 1955)....20

Cmty. Fin. Servs. Ass'n of Am., Ltd. v. CFPB, 51 F.4th 616 (5th Cir. 2022).....8

Def. Distributed v. Bruck, 30 F.4th 414 (5th Cir. 2022)..... 11, 12, 24

In re Clarke, 94 F.4th 502 (5th Cir. 2024)..... 3, 11, 13, 16, 17, 19, 21, 23

In re Fort Worth Chamber of Com., No. 24-10266, 2024 WL 1976963 (5th Cir. May 3, 2024)..... 2, 3, 6, 8, 9, 12, 13, 14, 16, 18, 19, 22, 23

In re Radmax, Ltd., 720 F.3d 285 (5th Cir. 2013) 11

In re Space Exploration Technologies, Corp., No. 24-40103, 2024 WL 948321 (Mar. 5, 2024).....10

In re TikTok, Inc., 85 F.4th 352 (5th Cir. 2023) 3, 11, 24

In re Volkswagen of Am. Inc., 545 F.3d 304 (5th Cir. 2008)..... 3, 11, 20, 23

In re: Horseshoe Entertainment, 337 F.3d 429 (5th Cir. 2003) 20

Sanders v. Johnson, No. CIV.A. H-04-881, 2005 WL 2346953 (S.D. Tex. Sept. 26, 2005).....17

Solomon v. Continental Am. Life. Ins., 472 F.2d 1043 (3d Cir. 1973) 20

Texas v. United States, 95 F. Supp. 3d 965 (N.D. Tex. 2015).....15

Time, Inc. v. Manning, 366 F.2d 690 (5th Cir. 1966).....13

Statutes

15 U.S.C. § 1665d.....4

15 U.S.C. § 1665d(b) 4

28 U.S.C § 1391(e)(1)(B) 15

28 U.S.C. § 1391(e)(1)(C) 14

28 U.S.C. § 1404 ..... 2, 20, 24

Other Authorities

Gen. Or. 2024-2 (S.D. Tex. Feb. 28, 2024) 9

Regulations

Credit Card Penalty Fees (Regulation Z), 89 Fed. Reg. 19,128 (Mar. 15, 2024).....4

STATEMENT OF RELIEF SOUGHT

Petitioners file this emergency petition for a writ of mandamus and request an immediate administrative stay of an order issued today by the district court transferring this case—for a second time—to the U.S. District Court for the District of Columbia. *See* District Court Docket ("Dist. Ct. Dkt.") 96 (attached as Exhibit 1). Less than two months ago, this Court entered an administrative stay of the district court's prior transfer order, and this Court ultimately vacated the transfer order on mandamus review. *See* No. 24-10248, ECF 55; No. 24-10248, ECF 62; *In re Fort Worth Chamber of Com.*, No. 24-10266, 2024 WL 1976963. Today, the district court once again ordered transfer.

Petitioners thus seek an emergency writ of mandamus ordering the district court to reopen the case and to immediately request that this case be transferred back to Forth Worth from the U.S. District Court for the District of Columbia, to allow the Fort Worth Chamber of Commerce and its co-plaintiffs to continue to challenge the Consumer Financial Protection Bureau's ("CFPB") new rule regarding credit card late fees. To ensure that this Court has an opportunity for appellate review, Plaintiffs also request that this Court issue an emergency administrative stay of the district court's transfer order while it considers this petition for a writ of mandamus. Plaintiffs filed this petition within hours of the district court's order and respectfully ask for a ruling before the U.S. District Court for the District of Columbia dockets

the case, which could be as early as the opening of business tomorrow morning; Plaintiffs thus respectfully request a ruling by 8 a.m.

ISSUE PRESENTED

Whether the district court abused its discretion in transferring the case to the District of Columbia under 28 U.S.C. § 1404 based on the location of the lawyers, the court's congestion, and the nature and merits of this federal regulatory challenge.

INTRODUCTION AND NATURE OF EMERGENCY

Petitioners respectfully petition for mandamus relief to prevent a legally erroneous transfer to the District of Columbia that would delay the resolution of this challenge and deprive Petitioners of their choice of a proper and appropriate venue. This Court has already issued mandamus relief once in this proceeding to prevent the district court's transfer. *See In re Fort Worth Chamber of Com.*, No. 24-10266, 2024 WL 1976963 (5th Cir. May 3, 2024). The Court issued a writ on the grounds that the district court lacked jurisdiction to transfer the case because Petitioners had already noticed an appeal of the effective denial of their preliminary-injunction motion. *Id.* at *5-6. Additionally, in a concurring opinion, Judge Oldham emphasized that even if the district court had jurisdiction, the transfer was inappropriate because Defendants had not shown good cause to merit transfer. *Id.* at *7-11 (Oldham, J., concurring).

Today, the district court again transferred this case to the District of Columbia, basing its decision primarily on congestion in the Northern District of Texas's docket, the location of the attorneys, and local interests in adjudicating this dispute in the District of Columbia. Dist. Ct. Dkt. 96. And, once again, the district court refused to stay its order to allow for an ordinary appeal, necessitating this request for emergency relief.

Mandamus relief is appropriate in these circumstances. First, this Court has held that mandamus relief is the only adequate relief for erroneous transfer orders. Second, Petitioners have established that they meet the standard that their right to relief is indisputable: The district court clearly abused its discretion in ordering transfer under 28 U.S.C. § 1404(a), the *Volkswagen II* factors, and this Court's binding precedent in *In re Clarke*, 94 F.4th 502, 508 (5th Cir. 2024), which is nearly indistinguishable from this case. Finally, mandamus relief is appropriate in these circumstances, where the district court's rationale envisions a sweeping change in challenges to federal rulemaking under the Administrative Procedure Act ("APA"), and its decision to transfer the case subjects Petitioners to an inappropriate exercise of a § 1404(a) transfer with little chance of review in the normal course. *See In re Fort Worth Chamber of Com.*, 2024 WL 1976963, at *11 (citing *In re TikTok, Inc.*, 85 F.4th 352, 367 (5th Cir. 2023)) ("[M]andamus is an appropriate exercise of our

supervisory discretion where transfer decisions are rarely reviewed and district courts continue to inconsistently administer § 1404(a) transfers.").

STATEMENT OF RELEVANT FACTS

The underlying challenge in this case concerns the CFPB's new rule on credit card late fees, which upends the way that credit card issuers have assessed late fees for over a decade. *See* Credit Card Penalty Fees (Regulation Z), 89 Fed. Reg. 19,128 (Mar. 15, 2024) ("Final Rule"). Congress expressly recognized that issuers may impose "penalty fee[s]" when customers violate their credit card agreements, so long as such fees are "reasonable and proportional to the omission or violation." 15 U.S.C. § 1665d(b). And Congress tasked federal agencies—first the Federal Reserve Board of Governors (the "Board"), and now the CFPB—with establishing standards for ensuring that such "penalty fees" are "reasonable and proportional," taking into account the costs incurred by the issuer from such violation, the deterrence effects of a late fee, and the conduct of the cardholder. 15 U.S.C. § 1665d. A decade ago, the Board promulgated, and the CFPB subsequently adopted, a regulatory framework that attempted to incorporate those three statutory criteria into its late-fee safe harbor.

In the Final Rule, the CFPB slashes the existing safe harbor amount by 75 percent, permitting credit card issuers to collect only $8 for first-time and subsequent late payments instead of the $30 and $41 that were previously allowed. In setting

that new amount, the CFPB has effectively jettisoned two of the criteria that Congress directed it to consider and focused solely on a subset of the costs that issuers incur as a result of late payments. Because the Final Rule will prevent issuers from collecting the reasonable and proportional penalty fees that the Credit Card Accountability Responsibility and Disclosure Act of 2009 ("CARD Act") expressly authorizes, the Rule plainly exceeds the CFPB's statutory authority. Further, the CFPB imposed a 60-day effective date that would not only have been unworkable for credit card issuers, but violates the Truth in Lending Act's provision that any rules "requiring any disclosure which differs from the disclosures previously required by this part . . . shall have an effective date of that October 1 which follows by at least six months the date of promulgation." 15 U.S.C. § 1604(d).

The CFPB announced the Final Rule on March 5, 2024, and Petitioners promptly filed this lawsuit and a motion for preliminary injunction on March 7, 2024. The complaint explains that venue was proper in the Northern District of Texas because one of the Petitioners—the Fort Worth Chamber of Commerce—resides in the district and "a substantial part of the events or omissions giving rise to the claims occurred in this district." Dist. Ct. Dkt. 1 at 11. Petitioners alleged that the Final Rule violated the Appropriations Clause and the separation of powers, the Credit Card Accountability Responsibility and Disclosure ("CARD Act"), the Dodd-

Frank Act, the Administrative Procedure Act, and the Truth in Lending Act ("TILA"). *Id.* at 35-40.

In light of the "short runway for issuers to comply [with the Final Rule] or seek injunctive relief," Petitioners requested expedited briefing and a decision within 10 days (by March 17, 2024). *In re Fort Worth Chamber of Com.*, No. 24-10266, 2024 WL 1976963, at *4 (5th Cir. May 3, 2024). As Petitioners explained, the process of printing and distributing new disclosures had to begin immediately, as it typically takes 4 months when done on an issuer-by-issuer basis and would take much longer with issuers representing 95 percent of the affected accounts forced to act at once. The district court granted Petitioners' motion for expedited briefing for "good cause" and set a briefing schedule that concluded on March 14, 2024. App.216. Judge O'Connor then recused himself on March 14, 2024, and Judge Mark Pittman was assigned to the case. App.257.

After the preliminary-injunction motion was fully briefed, Judge Pittman *sua sponte* issued an order inviting the CFPB to file a motion for discretionary transfer and setting a briefing schedule that would continue for an additional week. App.281-82. In light of the accruing irreparable harm and concern that a transfer would both cause additional irreparable harm and deny Petitioners' appellate review in this Court, Petitioners filed a motion for expedited consideration of their preliminary-injunction motion. Petitioners asked the district court to resolve that

motion *before* considering any discretionary transfer and in all events by Friday, March 22, 2024, and requested that if the court denied their motion, the court issue an injunction pending appeal. App.288-90; App.309. The district court denied Petitioners' motion for expedited consideration, citing the demanding docket in the Northern District of Texas, without addressing the significant harms cited by Petitioners. App.314.

That same day, the CFPB filed a motion to transfer the case to the U.S. District Court for the District of Columbia. App.316. In their opposition, Petitioners requested that any transfer order be stayed to allow for this Court's review in a timely fashion. App.400. Petitioners filed a notice of appeal and an emergency motion for an injunction pending appeal and an administrative stay, that same day, based on the district court's effective denial of their motion for a preliminary injunction. App.418-20.

Three days later, the district court granted Defendants' motion to transfer, without staying its order. App.461-67. The next day, Petitioners filed an emergency petition for a writ of mandamus and a motion for an administrative stay.

This Court immediately granted Petitioners' request for an administrative stay. It subsequently granted a writ of mandamus on the grounds that the district court lacked jurisdiction to transfer the case during the pendency of Petitioners' appeal from the effective denial of their motion for a preliminary injunction. *See* No.

24-10266, ECF No. 5; *In re Fort Worth Chamber of Com.*, No. 24-10266, 2024 WL 1976963, at *6 (5th Cir. May 3, 2024) (revised opinion replacing original, withdrawn opinion). In a concurring opinion, Judge Oldham explained that transfer would have been inappropriate even if the district court had jurisdiction because Defendants failed to "clearly establish good cause for the transfer." *In re Fort Worth Chamber of Com.*, 2024 WL 1976963, at *7 (Oldham, J., concurring) (internal quotation omitted).

Subsequently, this Court vacated the district court's effective denial of Petitioners' motion for a preliminary injunction and issued a limited remand instructing the district court to rule on the motion by May 10, 2024. No. 24-10248, ECF No. 105. On May 10, the district court granted Petitioners' motion for a preliminary injunction. App.512-23. In assessing the likelihood of Petitioners' success on the merits, the district court relied solely on Petitioners' claim that the Final Rule was promulgated through the agency's "double-insulated funding scheme," which this Court held to be unconstitutional in *Community Financial Services Ass'n of America, Ltd. v. CFPB*, 51 F.4th 616 (5th Cir. 2022) ("*CFSA*"). The district court found it unnecessary to reach Petitioners' alternative statutory claims, which it described as "compelling." App.516. On May 16, the Supreme Court reversed this Court's binding precedent in *CFSA*. The CFPB explained to the district court that it intended to seek to dissolve the preliminary injunction and

transfer the case. App.534 n.1. This Court later granted the CFPB's motion to dismiss the appeal in this case and issued the mandate, thus returning full jurisdiction to the district court. No. 24-201248, ECF No. 122; No. 24-10266, ECF No. 134.

On May 28, the CFPB filed a motion to again transfer the case to the District of Columbia. Dist. Ct. Dkt. 94. Later that day, the district court ordered that the case be transferred to the District of Columbia. *See* Dist. Ct. Dkt. 96. The court explained that its order was based on Defendants' prior motion to transfer and Petitioners' response. *Id.* at 1 n.1. And, the district court, once again, failed to stay the transfer order and allow Petitioners time to seek appellate review, as previously requested by Petitioners and indicated by Judge Oldham. *See* App.400; *In re Fort Worth Chamber of Com.*, No. 24-10266, 2024 WL 1976963, at *11 (Oldham, J., concurring) ("This case again highlights why a district court should stay a transfer order for a short period so that opposing parties may appeal it . . . . [T]hat procedure would have avoided the very unfortunate circumstance presented by this motion: we've been forced to consider a mandamus application on a highly truncated timeline and to grant relief that could've otherwise been avoided."); *cf.* Gen. Or. 2024-2 (S.D. Tex. Feb. 28, 2024) ("[A]n order that transfers a civil case . . . to a district court outside the Fifth Circuit is stayed for 21 days from the date the order is entered on the docket.").

In its new transfer order, the district court again emphasized that the Northern District of Texas has a busier docket than that of the District of Columbia and that Petitioners challenge actions by government officials based in the District of Columbia. Dist. Ct. Dkt. 96 at 8-9. More specifically, the district court found that three of the four private interest factors were "neutral" as to transfer, but that one factor—"all other practical factors that might make a trial more expeditious and inexpensive"—weighed in favor of transfer because most of Petitioners' lawyers were located in the District of Columbia. Dist. Ct. Dkt. 96 at 7-8. The district court found that two of the public interest factors were likewise neutral, while the other two—"court congestion" and "local interests"—favored transfer. Dist. Ct. Dkt. 96 at 8-9.

Plaintiffs now, within hours of receipt of the district court's transfer order, request a stay of that order and file this petition for a writ of mandamus, in accordance with this Court's procedure in the *SpaceX* case. *See, e.g.*, *In re Space Exploration Technologies*, Corp., No. 24-40103, 2024 WL 948321 (Mar. 5, 2024) (Elrod, J., dissenting) ("Because the stay was entered before transfer of the case was complete, we confirmed that we retained jurisdiction over the case").

REASONS FOR GRANTING THE WRIT

A writ of mandamus is warranted if the petitioner satisfies three conditions. First, the petitioner must show that there are "no other adequate means to attain the

relief he desires." *Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380 (2004). Second, the petitioner must show a "clear and indisputable right to the writ." *Id.* at 381. Third, the court "must be satisfied that the writ is appropriate under the circumstances." *Id*. Petitioners satisfy all three conditions.

I. Petitioners have no other adequate means of relief.

With respect to a motion for transfer under § 1404(a), "this circuit has established that the first 'mandamus requirement [of no other adequate means of relief] is satisfied.' " *In re TikTok, Inc.*, 85 F.4th 352, 358 (5th Cir. 2023) (quoting *In re Radmax, Ltd*., 720 F.3d 285, 287 n.2 (5th Cir. 2013) (per curiam)).

II. Petitioners have a clear and indisputable right to the writ.

Petitioners have a clear and indisputable right to the writ because the district court clearly abused its discretion in ordering transfer under § 1404(a), *Volkswagen II*, and this Court's binding decision in *Clarke*. *See Volkswagen II*, 545 F.3d at 311 (right is indisputable if district court clearly abused discretion); *see also Clarke*, 94 F.4th at 508.

A defendant moving to transfer venue bears the heavy burden of "clearly demonstrat[ing]" that its chosen venue is "clearly more convenient," not merely "more likely than not to be more convenient." *Clarke*, 94 F.4th at 508. "Assuming that jurisdiction exists and venue is proper, the fact that litigating would be more convenient for the defendant elsewhere is not enough to justify transfer." *Def.*

Distributed v. Bruck, 30 F.4th 414, 433 (5th Cir. 2022). Thus, the party moving for transfer must show that "the marginal gain in convenience will be significant" and that "those marginal gains will actually materialize in the transferee venue." *Clarke*, 94 F.4th at 508.

More specifically, district courts in the Fifth Circuit must consider eight factors when weighing whether the moving party carried its burden. That said, there is good reason to argue that a party seeking an *inter*-circuit transfer, as here, must carry a higher burden. *See In re Fort Worth Chamber of Com.*, 2024 WL 1976963, at *9 n.3 (Oldham, J., concurring) (noting that the eight factors described below are drawn from a decision involving an intra-circuit transfer and "[q]uery[ing] whether a higher burden should be met in advocating a § 1404(a) transfer from a district court in one circuit to a district court in another circuit more than 1,000 miles away"). The four private-interest factors are "(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive," *Def. Distributed*, 30 F.4th at 433-34, and the public-interest factors are "([5]) the administrative difficulties flowing from court congestion; ([6]) the local interest in having localized interests decided at home; ([7]) the familiarity of the forum with the law that will govern the

case; and ([8]) the avoidance of unnecessary problems of conflict of laws [or in] the application of foreign law," *id*. at 435.

In this case, as in *Clarke*, the district court recognized that most of the factors were neutral. Yet also as in *Clarke*, the district court erroneously concluded that court congestion and local interests favored transfer. And the district court compounded those errors by focusing on the location of the *lawyers* when assessing the fourth private interest factor concerning practicalities. As in *Clarke*, the district court committed a clear abuse of discretion in its ruling.

A. Petitioners filed suit in a proper venue

A plaintiff's choice of venue is entitled to deference. *See Volkswagen II*, 545 F.3d at 315; *see also Time, Inc. v. Manning*, 366 F.2d 690 (5th Cir. 1966) (cleaned up) ("[P]laintiff's privilege of choosing venue places the burden on the defendant to demonstrate why the forum should be changed. Plaintiff's privilege to choose, or not to be ousted from, his chosen forum is highly esteemed.").

The district court asserted that Petitioners' choice of venue is entitled to less weight where "plaintiff brings suit outside his home forum." Dist. Ct. Dkt. 96 at 5. But that proposition is inapplicable in this case and conflicts with the relevant venue statute. The proposition is inapplicable in this case because this division and district is the home forum of one of the petitioners, the *Fort Worth* Chamber of Commerce. *See In re Fort Worth Chamber of Com.*, 2024 WL 1976963, at *8

(Oldham, J., concurring) ("I am unaware of any support in our precedent or the Supreme Court's for this less-respect rule. To the contrary, we have never put a geographic caveat on our repeated statements about the plaintiff's choice of venue."). And such a rule conflicts with the relevant venue statute because that statute provides for three avenues to establish venue, "including, *but expressly not limited to*, the residence of the plaintiff." *Id.* (citing 28 U.S.C. § 1391(e)(1)(C)). "Because Congress gave no textual priority to one of these three avenues, [courts] cannot give preference to suits brought in the plaintiff's home forum." *Id.*

The district court's emphasis on the District of Columbia's status as "the epicenter for these types of rules and challenges," Dist. Ct. Dkt. 96 at 10, squarely conflicts with Congress's decision to allow federal rulemaking challenges to proceed in courts across the country, so long as the requirements of the venue statute are satisfied.

The district court took note that Petitioners' "only apparent connection" to the Northern District of Texas is that one Petitioner is headquartered there and the effects of the CFPB's Final Rule will be felt here. Dist. Ct. Dkt. 96 at 11. But, as noted above, the residence of the Petitioner is one of the three avenues to establish venue expressly articulated by Congress. *See* 28 U.S.C. § 1391(e)(1)(C). And whether venue would also be proper elsewhere, *see In re Fort Worth Chamber of Com.*, 2024 WL 1976963, at *3 (Higginson, J., dissenting), does nothing to detract

from the "longstanding deference that courts show towards the plaintiff's choice of venue." *Id.* at *7 (Oldham, J., concurring).

Moreover, the fact that the effects of the CFPB's Final Rule will be felt in Fort Worth *supports* Petitioners' choice to file its lawsuit in this district. District courts have held that "a substantial part of the events or omissions giving rise to the claim[s]" takes place where an unlawful rule imposes its burdens. *See, e.g., Texas v. United States*, 95 F. Supp. 3d 965, 973 (N.D. Tex. 2015) (O'Connor, J.) (finding venue proper under § 1391(e)(1) in a challenge to a Department of Labor rulemaking regulating employment because one plaintiff employed people in the district), *injunction dissolved on other grounds*, 2015 WL 13424776 (N.D. Tex. June 26, 2015). The CFPB's final rule will impose substantial burdens here, where several card-issuing members of Petitioner associations have customers. The Final Rule will burden those issuers' relationships with their many cardholders (and prospective cardholders) in Fort Worth.

It bears emphasizing that to establish venue under this alternative avenue, 28 U.S.C § 1391(e)(1)(B), Petitioners need only show that a "substantial part of the events" giving rise to the claim occurred in the district. There is no requirement that the impact be "uniquely and particularly felt," notwithstanding the district court's statement otherwise. *Compare* Dist. Ct. Dkt. 96 at 11 ("An easy way for Plaintiffs to guarantee proper venue is to bring cases in jurisdictions where the

impact is *uniquely* and *particularly* felt."); *with In re Fort Worth Chamber of Com.*, 2024 WL 1976963, at *8 (Oldham, J., concurring) (citing App.466) (noting that "those words do not appear in the relevant federal venue statute").

B. Public interest factors

As in *Clarke*, the district court clearly abused its discretion in concluding that court congestion and local interest factors weighed in favor of transfer to the District of Columbia.

1. Court Congestion. In *Clarke*, this Court expressly held that court congestion alone is not a sufficient basis for transfer because it would undermine the "weight" due to a plaintiff's choice and "ignore[] the plaintiffs' role as master of the complaint." *Clarke*, 94 F.4th at 515. In granting mandamus to a district court that transferred an APA case from the Western District of Texas to the District of Columbia, this Court explained, "it would be a stretch to say that court congestion 'favors D.D.C.' and not just transfer 'somewhere else.'" *Clarke*, 94 F.4th at 515. Yet in this case, the district court focused on court congestion statistics to conclude that "court congestion" "more heavily favors transfer" because of the expedited timeline of this case. That is clearly wrong after *Clarke*. *See In re Fort Worth Chamber of Com.*, 2024 WL 1976963, at *10 (Oldham, J., concurring) ("[A] district court's 'guess' about the congested nature of other district dockets" is entitled to much less

weight and, for that reason, "[i]f this factor weighs in favor of transfer, it does so only slightly.").

Any weight this factor may have in favor of transfer is reduced even further now that this dispute has already made its way through the district court's docket and the preliminary injunction motion has been decided. The time required for another court to familiarize itself with the proceedings supplants concerns about the speed of disposition of cases in the Fort Worth division, which has already begun adjudicating these issues. *See Sanders v. Johnson*, No. CIV.A. H-04-881, 2005 WL 2346953, at *2 (S.D. Tex. Sept. 26, 2005) ("This Court has a working knowledge of this case, and a transfer at this stage would be a waste of judicial resources."). It is no longer "clearly" the case, *Clarke*, 94 F.4th at 508, that the "D.D.C. would facilitate a more expeditious resolution of this time sensitive manner," Dist. Ct. Dkt. 96 at 8, than the district court in Fort Worth.

2. Local Interests. In *Clarke*, this Court concluded that the district court "clearly abused its discretion" in concluding that local interests "weighed heavily in favor of" transfer to the District of Columbia. This Court held that the "local-interest inquiry is concerned with the interest of non-party citizens" in adjudicating the case, not "the parties' connections to the venue." *Clarke*, 94 F.4th at 511. Because the effects of the regulatory action would be felt by regulated parties in the district (and

also in the District of Columbia), this Court concluded that this factor did not weigh in favor of transfer. *Id*.

The same is true here. Plaintiffs have amply demonstrated that non-party citizens in this District have a strong interest in the outcome of this case. *See* App.410 (stating that Comenity and Comenity Capital Bank serve 5,793 client locations in Texas, compared to only 51 in the District of Columbia); App.407 ("As of December 31, 2023, Synchrony has approximately 6.4 million unique cardholders in Texas, including approximately 600,000 in the Fort Worth Division and approximately 200,000 in the Tyler Division. By contrast, Synchrony has approximately 71,000 cardholders in the District of Columbia."); *id.* at ¶ 9 ("[A]pproximately 11% of Synchrony's total outstanding loan receivables were from Texas—the highest amount of any state. Approximately 0.1% of Synchrony's total outstanding loan receivables were from the District of Columbia—a smaller amount than in any state."); *see also In re Fort Worth Chamber of Com.*, 2024 WL 1976963, at *10 (Oldham, J., concurring) ("Plaintiffs have alleged that many of the non-party citizens that will be affected by the challenged CFPB Rule live in Texas, including in the Northern District. And as relevant to the 'relative' nature of the transfer analysis, *many more potentially affected non-party citizens are in Texas than in the District of Columbia*.") (citations omitted) (emphasis added).

The district court acknowledges that *Clarke* clarifies that "the local-interest inquiry is concerned with the interest of *non-party citizens*" but nevertheless proceeds to conclude: "[T]he Court finds any argument on this point unpersuasive here." Dist. Ct. Dkt. 96 at 9. The district court goes on to emphasize that citizens of Fort Worth lack any "particularized, localized interest," *see id.*, but that is exactly the reasoning rejected in *Clarke*: "That an interest is highly diffuse (but not completely diffuse) only increases the chance it is regarded as equally important by citizens in both the transferor and transferee districts (thereby netting out to zero)." *Clarke*, 94 F.4th at 511. Therefore, "[p]roperly understood, local interests do not weigh in favor of transfer and plausibly weigh against transfer." *In re Fort Worth Chamber of Com.*, 2024 WL 1976963, at *10 (Oldham, J., concurring).

C. Private interest factors

The district court also clearly abused its discretion in concluding that one of the private interest factors—practicalities of litigation—weighed heavily in favor of transfer.

In assessing the last of the private-interest factors, the district court concluded that the fourth factor weighs in favor of transfer because "there are ten attorneys spanning five different firms or organizations representing the various Parties in the case" and "[o]f the ten, *eight* list their offices in the District of Columbia," such that "any proceedings th[e] Court conducts . . . will require all of Defendants' counsel

and two-thirds of Plaintiffs' counsel to travel to Fort Worth—a task that will be charged to their clients or to the government." Dist. Ct. Dkt. 96 at 7. The court indicated (failing to note the CFPB's source of funding from the Federal Reserve, not the Treasury) that "taxpayers, including residents of Fort Worth, would foot an expensive bill for this litigation." *Id.*

As an initial matter, the district court cited *no* authority for the proposition that the location of *counsel* (as opposed to parties or witnesses) is relevant to the private-interest factors under *Volkswagen II*, and indeed precedent confirms it is not. This Court held in earlier iterations of *Volkswagen* that "[t]he word 'counsel' does not appear anywhere in § 1404(a), and the convenience of counsel is not a factor to be assessed in determining whether to transfer a case under § 1404(a)." *In re Volkswagen AG*, 371 F.3d 201, 206 (5th Cir. 2004). Nothing in *Volkswagen II* contradicts the point or purports to overrule this Court's earlier precedent that "[t]he factor of 'location of counsel' is irrelevant and improper for consideration in determining the question of transfer of venue." *See In re Horseshoe Ent.*, 337 F.3d 429, 434 (5th Cir. 2003). And at least two of this Court's sister circuits agree, holding that "[t]he convenience of counsel is not a factor to be considered" in the § 1404 analysis. *See Solomon v. Continental Am. Life Ins.*, 472 F.2d 1043, 1047 (3d Cir. 1973); *Chicago, Rock Island & Pac. R.R. Co. v. Igoe*, 220 F.2d 299, 304 (7th Cir. 1955). Indeed, it is worth noting that this Court did not consider the location of

counsel in assessing transfer to the District of Columbia in *Clarke*, despite the fact that most of the relevant counsel in that case were also located in the District of Columbia. *See* 94 F.4th at 506 & n.12. The district court's primary response to this precedent—that location of counsel is not an "independent factor" but rather part of "a holistic review of practical factors," Dkt. 96, at 7-8, would render this Court's precedent a dead letter.

The principle that the location of counsel should not factor into the "practicalities of litigation" analysis or outweigh a proper venue selected by the plaintiff is even more compelling now than it was at the time of this Court's original transfer order. This fourth factor accounts for concerns of judicial efficiency, including judicial knowledge of a case. *See Sanders v. Johnson*, No. CIV.A. H-04-881, 2005 WL 2346953, at *2 (S.D. Tex. Sept. 26, 2005) ("This Court has a working knowledge of this case, and a transfer at this stage would be a waste of judicial resources."). At this point, the district court has already reviewed Petitioners' statutory claims enough to recognize that they are "compelling." *See* Dist. Ct. Dkt. 82 at 5. And both this Court and the district court are well-versed in the irreparable harm that will accrue to Petitioners and their members as a result of the challenged rule, *see, e.g.*, *id.* at 6 (granting Plaintiffs' motion for a preliminary injunction because Plaintiffs face irreparable harm); *In re Fort Worth Chamber of Com.*, 2024 WL 1976963, at *4 (noting that the Final Rule "created a short runway for issuers to

comply or seek preliminary injunctive relief"), as well as the litigation's complicated procedural history. It would make little sense to ask a new district court—and a new circuit court of appeals—to get up to speed on this case.

Worse, considering the location of counsel in the private-interest analysis would lead to gamesmanship. For example, the CFPB asked Petitioners to consent to a motion to waive the agency's local counsel requirement in this case, and Petitioners agreed. If such a request were relevant to venue, federal agencies may be more inclined to make such requests and plaintiffs would have no incentive to consent to them, even though they save public funds. Nor should plaintiffs be deterred from selecting their counsel of choice and listing them on pleadings based on concerns about how the location of their lawyers would affect a transfer analysis.

Moreover, weighing the location of counsel in favor of transfer risks fundamentally altering APA litigation and undermining our federalist system. *In re Fort Worth Chamber of Com.*, 2024 WL 1976963, at *9 n.4 (Oldham, J., concurring) ("[D]efendants give no indication how the reasoning in the transfer order could not be used by federal defendants to always support transfers to the D.D.C. on account of government counsel's convenience and expense."). "Such an outcome would concentrate federal judicial power in D.C. and undermine our federalist system." *Id.* at *9.

Finally, the district court's reliance on the location of counsel does not "reflect[] the appropriate deference to which the Plaintiffs' choice of venue is entitled," *Volkswagen II*, 545 F.3d at 315. Of the eight attorneys that reside in the District of Columbia, six of those are counsel for Petitioners, and four of those are *in-house* counsel for some of the Petitioners. Weighing the location of Petitioners' counsel *against* Petitioners improperly discounts Petitioners' choice of venue. *See also In re Fort Worth Chamber of Com.*, 2024 WL 1976963, at *9 (Oldham, J., concurring) ("[P]laintiffs are the 'master[s] of the complaint.' That characterization would mean very little if the travel costs of the plaintiffs' lawyers could be used to oppose the plaintiffs' own choice of venue.").

The district court thus clearly abused its discretion in finding that the location of counsel in this case weighed heavily in favor of transfer.

D. Good cause

In light of these errors regarding the public and private interest factors, the CFPB did not, as it was required to do, "clearly establish good cause for transfer based on convenience and justice." *Clarke*, 94 F.4th at 514. Of the eight factors, six are neutral under this Court's precedents and one weighs *against* transfer. The only other—court congestion—neither favors transfer to the District of Columbia, as opposed to somewhere else, nor is "by itself" sufficient to justify transfer. *Id.* The

district court clearly abused its discretion by ordering transfer to the District of Columbia.

III. Petitioners have shown that a writ is appropriate under the circumstances.

Petitioners also have satisfied the third mandamus requirement, that "the writ is appropriate under the circumstances." *Cheney*, 542 U.S. at 380.

Mandamus is "especially appropriate" when, as here, "the issues implicated have importance beyond the immediate case." *Def. Distributed*, 30 F.4th at 426. This Court has "recognized that § 1404(a) decisions often have importance beyond the immediate case . . . because venue transfer decisions are rarely reviewed, and district courts have . . . applied [this Court's] tests with too little regard for consistency of outcomes." *In re TikTok, Inc.*, 85 F.4th 352, 367 (5th Cir. 2023) (cleaned up). Consequently, "granting mandamus in [such a] case will improve 'consistency of outcomes' by further instructing when transfer is—or, for that matter, is not—warranted in response to a § 1404(a) motion." *Id*.

This case in particular involves issues of importance "beyond the immediate case." Those issues include the erroneous legal focus of the district court on the location of lawyers and court congestion, as well as its premise that the District of Columbia should be the "epicenter" for APA challenges. The district court's ruling contemplates sweeping implications for APA challenges. It is hard to see how any APA challenges would remain in this Circuit if court congestion, the location of

lawyers, and the District of Columbia's role in agency rulemaking justify transfer in the mine-run of cases.

CONCLUSION

Petitioners respectfully ask that the Court grant their emergency petition for a writ of mandamus and, during its consideration of that petition, issue an administrative stay of the district court's transfer order.

Dated: May 28, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 25(d) and 5th Cir. R. 25.2.5, I hereby certify that on May 28, 2024, I filed the foregoing document via the Court's CM/ECF system and

also caused the foregoing to be served by email on the following counsel for Respondents:

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Pursuant to Fed. R. App. P. 21(a), I hereby certify that on May 28, 2024, I also caused the foregoing to be served by email on the district court at the following email address (Pittman_Orders@txnd.uscourts.gov).

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS AND 5TH CIR. R. 27.3

This document complies with the word limit of Fed. R. App. P. 21 because it contains fewer than 7800 words. This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and 5th Cir. R. 32.1 and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font. Additionally, I certify that any required redactions have been made in compliance with 5th Cir. R. 25.2.13. I certify that the facts supporting emergency consideration of the motion are true and complete.

Dated: May 28, 2024

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