APPENDIX

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APPENDIX A

United States Court of Appeals For the Fourth Circuit

772 Fed.Appx. 34

ISRAEL K. NEGASH, an individual; ETHIO, INC., A MARYLAND CORPORATION d/b/a Sunoco Food Mart,

Plaintiff-Appellants, v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

No. 18-1869

Submitted: March 26, 2019

Decided: May 7, 2019

Appeal from the United States District Court of Maryland, at Baltimore. Richard D. Bennett, District Judge. (1:17-cv-01954-RDB)

OPINION

Affirmed by unpublished per curiam opinion. Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Israel K. Negash and Ethio, Inc. (collectively, Appellants), filed a petition pursuant to 7 U.S.C. § 2023 (2012), seeking judicial review of the United States Department of Agriculture (USDA)'s decision to permanently disqualify them from participating in the Supplemental Nutrition Assistance Program (SNAP). The district court granted the USDA's motion for summary judgment and denied the Appellants' Fed. R. Civ. P. 59(e) motion. The Appellants contend that the district court erred in granting summary judgment prior to discovery. We affirm the district court's orders.

We "review[ ] de novo the district court's order granting summary judgment." Jacobs v. N.C. Admin. Office of the Courts, 780 F.3d 562, 565 n.1 (4th Cir. 2015). "A district court 'shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.' " Id. at 568 (quoting Fed. R. Civ. P. 56(a)). "A dispute is genuine if a reasonable jury could return a verdict for the nonmoving party." Id. (internal quotation marks omitted). In determining whether a genuine dispute of material fact exists, "we view the facts and all justifiable inferences arising therefrom in the light most favorable to ... the nonmoving party." Id. at 565 n.1 (internal quotation marks omitted). However, "the

nonmoving party must rely on more than conclusory allegations, mere speculation, the building of one inference upon another, or the mere existence of a scintilla of evidence." Dash v. Mayweather, 731 F.3d 303, 311 (4th Cir. 2013).

"We review a district court's denial of a Rule 56(d) motion for abuse of discretion." Pisano v. Strach, 743 F.3d 927, 931 (4th Cir. 2014). We will not reverse the denial of a Rule 56(d) motion absent a clear abuse of discretion or a real possibility that the denial of discovery resulted in prejudice to the moving party. Strag v. Bd. of Trs., 55 F.3d 943, 954 (4th Cir. 1995). Relief under Rule 56(d) is "broadly favored and should be liberally granted in order to protect non-moving parties from premature summary judgment motions." McCray v. Md. Dep't of Transp., 741 F.3d 480, 484 (4th Cir. 2014) (internal quotation marks omitted). However, "a court may deny a Rule 56(d) motion when the information sought would not by itself create a genuine issue of material fact sufficient for the nonmovant to survive summary judgment." Pisano, 743 F.3d at 931.

"Congress has been quite firm in ensuring that [SNAP benefits] are used only to purchase eligible food items, and are not exchanged for cash or other things of value." Idias v. United States, 359 F.3d 695, 697 (4th Cir. 2004) (internal quotation marks omitted). "[A] store that is caught trafficking in food stamps even one time must be permanently disqualified from [SNAP], unless the Secretary of Agriculture determines that the store had in place an effective anti-trafficking policy." Id. Trafficking is defined, as relevant here, as *36 "buying, selling, stealing or otherwise effecting an exchange of SNAP benefits issued and accessed via [EBT] cards ... for

cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone." 7 C.F.R. § 271.2 (2018). An aggrieved party may seek judicial review of the USDA's finding that it trafficked in benefits. 7U.S.C. § 2023(a)(13). Unlike most judicial review of agency action, review of the USDA's trafficking determination is de novo, and is not limited to the administrative record. 7 U.S.C. § 2023(a)(15).

We conclude that the district court did not abuse its discretion in granting summary judgment prior to discovery. On appeal, the Appellants seek primarily two pieces of information—the identities of the stores the USDA compared the Appellants' store's sales to ("the comparison stores") and the identity of the households whose transactions the USDA identified as suspicious. As to the comparison stores, the Appellants contend that this information is necessary for them to discover whether they were appropriate comparators. For the household information, the Appellants argue they could use this information to obtain affidavits or depose them to discover the reasons for their shopping habits.

While this information would have been useful, the Appellants did not seek this information in the district court. Absent exceptional circumstances, we will not consider issues raised for the first time on appeal. See In re Under Seal, 749 F.3d 276, 285 (4th Cir. 2014). In the district court, the Appellants only sought the identity of the households to demonstrate that they shopped at their store because of their selection of ethnic food. This evidence cannot create a genuine dispute of material fact given the objective evidence in the record demonstrating that the store's inventory was similar to that of a normal convenience

store—the pictures taken by the USDA's inspector and the invoices submitted by the Appellants. See Scott v. Harris, 550 U.S. 372, 380, 127 S.Ct. 1769, 167 L.Ed.2d 686 (2007) ("When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.").

As to the comparison stores, in the district court the Appellants only sought the transaction data for the stores the USDA compared their store to. However, this information would not have created a genuine dispute of material fact. While the USDA did not reveal the identities of the comparison stores, the administrative record contains their EBT sales data and they were all located within one mile of the Appellants' store. Additionally, the administrative record shows that several of the Appellants' store's customers also used their EBT benefits at larger grocery stores and supermarkets, rebutting their contention that their customers lacked transportation to such businesses. To the extent that the Appellants seek this information to argue that they have a more superior grocery selection than the comparison stores, the record clearly refutes their argument that they were anything other than a normal convenience store. While a court considering a summary judgment motion must give the nonmoving party the benefit of all reasonable inferences, the Appellants instead ask us to abandon common sense—the USDA rightfully concluded that there is no logical explanation for 72 individuals spending over $100 on convenience store items when the Appellants' store does not have a single shopping cart or basket, households *37 were

visiting larger grocery stores in addition to the Appellants' store, and suspicious transactions quickly decreased once the Appellants were on notice that their sales were under investigation.

Accordingly, we affirm the district court's orders. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

United States Court of Appeals For the Fourth Circuit

772 Fed.Appx. 34

ISRAEL K. NEGASH, an individual; ETHIO, INC., A MARYLAND CORPORATION d/b/a Sunoco Food Mart,

Plaintiff-Appellants, v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

No. 18-1869 (1:17-cv-01954-RDB)

ORDER

The Court denied the petition for rehearing.

Entered at the direction of the panel: Judge Wilkinson, Judge Harris and Senior Judge Hamilton.

For the Court

/s/ Patricia S. Conner, Clerk

United States District Court District of Maryland
2018 WL 722481

ISRAEL K. NEGASH, et al.,
Plaintiff, v.
UNITED STATES OF AMERICA,
Defendant.

1:17-cv-01954-RDB
Signed February 5th, 2018

MEMORANDUM

Richard D. Bennett, United States District Judge

Plaintiffs Israel K. Negash and Ethio, Inc., d/b/a Sunoco Food Mart, bring this action against defendant United States of America under 7 U.S.C. § 2023, asking the court to set aside the Food & Nutrition Service's decision to permanently disqualify them from participating in the Supplemental Nutrition Assistance Program as a retailer. Now pending is defendant's motion to dismiss or, in the alternative, for summary judgment. The parties have fully briefed the issues, and no oral argument is necessary. See Local Rules 105.6. For the reasons set forth below, defendant's motion is treated as a motion for summary judgment and granted.

BACKGROUND

Plaintiff Israel K. Negash ("Negash") is the owner and operator of Ethio, Inc., d/b/a Sunoco Food Mart ("the Store") in Baltimore, Maryland. (ECF No. 1, ¶ 1). The Store began participating in the Supplemental Nutrition Assistance Program ("SNAP"), formerly known as Food Stamps, in May 2001. (ECF No. 9–2; Administrative Appeal Record ("A.R.") 1).

The SNAP Program

SNAP is a government program operated by the Food & Nutrition Service ("FNS"), a component of the United States Department of Agriculture ("USDA"). See 7 C.F.R. § 271.3. SNAP is operated pursuant to 7 U.S.C. §§ 2011–2036. The purpose of SNAP is to provide food to low income individuals. See 7 U.S.C. § 2011. SNAP beneficiaries are awarded benefits in the form of an Electronic Benefits Transfer ("EBT") card, which is akin to a debit card and can be used only for the purchase of food and certain other eligible items sold by approved SNAP retailers. See id. §§ 2013(a), 2016(j); see also 7 C.F.R. 271.2.

SNAP retailers are governed by certain regulations. See 7 C.F.R. § 278.6. Pursuant to those regulations, the FNS can permanently disqualify a SNAP retailer that it finds is "trafficking" in SNAP benefits. Id. "Trafficking" is defined in pertinent part as "buying, selling, stealing or otherwise effecting an exchange of SNAP benefits issued and accessed via (EBT) cards ... for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone." 7 C.F.R. § 271.2. A finding of trafficking must be

based on evidence, which "may include facts established through on-site investigations, inconsistent redemption data, [and] evidence obtained through a transaction report under an electronic benefit transfer system " 7 C.F.R. § 278.6(a). If a retailer is found to be trafficking in SNAP benefits, the retailer is permanently disqualified from participation in SNAP. Id. FNS may impose a civil money penalty ("CMP") in lieu of permanent disqualification only where the retailer requests consideration of this alternative penalty within ten days, 7 U.S.C. § 278.6(b)(2)(iii), and where the retailer can meet certain other criteria designed to demonstrate that a rogue employee engaged in trafficking despite the best efforts of the retailer. See 7 U.S.C. § 278.6(i).

The regulations provide for a system of administrative and judicial review of an FNS decision to disqualify a SNAP retailer. See 7 U.S.C. § 2023(a); 7 C.F.R. §§ 279. First, the FNS must send the retailer written notice of its initial decision. 7 U.S.C. § 2023(a)(1). Upon receipt of the written notice, the retailer may ask the FNS to review the initial decision. 7 C.F.R. § 279.1. If requested, the FNS must review the initial decision and render a final agency decision. Id. at 279.5. After receiving notice of a Final Agency Decision, a retailer may seek judicial review in a state or federal court. See 7 U.S.C. § 2023(a)(13); 7 C.F.R. § 279.7.

The Facts Of This Case

In this case, the FNS's electronic alert system indicated that the Store's EBT data was consistent with possible trafficking in EBT benefits between February and July 2016. (A.R. 72). As a result, the FNS Retailer Operations

Division ("ROD") began an investigation into the Store. Id. An individual from the ROD visited the Store on June 18, 2016. (A.R. 30– 35). The ROD also compared the Store's transactions to those of other stores in the area, including four other convenience stores within a one-mile radius. (A.R. 79–82). The ROD then analyzed all of the information gathered during its investigation and determined that the transactions discovered by the EBT data were, in fact, suspicious. (A.R. 85–87). The Store's suspicious transactions fell into three categories: (1) rapid and repetitive transactions in a short period of time from the same household (A.R. 88–91); (2) transactions involving the depletion of the majority or all of a household's benefits in a short timeframe (A.R. 92–94); (3) high dollar transactions (A.R. 95–100). These transactions were inconsistent with the transactions at other similarly situated SNAP retailers. (A.R. 79–84).

On August 11, 2016, the FNS sent a letter to Negash informing him that the Store was being charged with trafficking under 7 C.F.R. § 271.2. (A.R. 85–87). The letter stated that Negash had a right to explain the suspicious charges and a right—within ten days—to request a CMP ("Civil Money Penalty") in lieu of permanent disqualification. (A.R. 86–87).

Negash, through his attorney, replied to the charge letter, requesting additional time to respond. (A.R. 103). He acknowledged that in so doing he was forfeiting the right to be considered for a CMP. Id. Eventually, Negash responded to the substantive allegations, offering a litany of explanations for the suspicious transactions. (A.R. 107–115). The

explanations offered by Negash primarily revolved around the notion that the Store was not a typical convenience store/gas station, but was instead the primary grocer for many individuals. See id. The FNS considered Negash's explanations but found no evidence the Store was anything but a typical convenience store, and found that Negash's other explanations did not account for the suspicious transactions. (A.R. 188–197). On September 20, 2017, the FNS issued a determination letter informing Negash that it found the Store had engaged in trafficking and that it was therefore permanently disqualifying the Store from participation in SNAP. (A.R. 198–99).

Negash sought administrative review of the decision to disqualify the Store, reiterating many of the same explanations offered in response to the initial charge letter. (A.R. 212–226). An Administrative Review Officer ("ARO") of the FNS reviewed the information submitted by Negash and then issued a Final Agency Decision on June 13, 2017. (A.R. 313–329). The ARO found, among other things, that the Store was simply a typical convenience store/gas station, and that its inventory did not lend itself to the many large, suspicious transactions at issue. (A.R. 323). It also noted that following the Store's receipt of the initial charge letter there was a precipitous decline in the number of suspicious transactions—a fact that was in itself suspicious. (A.R. 328). Therefore, the ARO upheld both the decision that "trafficking" had occurred and the decision to permanently disqualify the Store from the SNAP program. (A.R. 329). Negash and the Store now seek judicial review of those decisions.

STANDARDS

Motion To Dismiss Or, In The Alternative, For Summary Judgment

Defendant has filed a dispositive motion styled as a motion to dismiss under Fed.R.Civ.P. 12(b)(6) or, in the alternative, for summary judgment under Fed.R.Civ.P. 56. It has attached exhibits to its submissions. (See ECF No. 9). A court "is not to consider matters outside the pleadings or resolve factual disputes when ruling on a motion to dismiss." Bosiger v. U.S. Airways, 510 F.3d 442, 450 (4th Cir. 2007). If the court does so, "the motion must be treated as one for summary judgment under Rule 56." Fed.R.Civ.P. 12(d). Therefore, a motion styled in this manner implicates the court's discretion under Rule 12(d) of the Federal Rules of Civil Procedure. See Kensington Vol. Fire Dept., Inc. v. Montgomery County, 788 F.Supp.2d 431, 436–37 (D. Md. 2011). A district judge has "complete discretion to determine whether or not to accept the submission of any material beyond the pleadings that is offered in conjunction with a Rule 12(b)(6) motion and rely on it, thereby converting the motion, or to reject it or simply not consider it." Sager v. Hous. Com'n of Anne Arundel Cty., 855 F.Supp.2d 524, 542 (D. Md. 2012) (quoting 5C Wright & Miller, Federal Practice & Procedure § 1366, at 159 (3d ed. 2004, 2011 Supp.)). The court chooses to consider defendant's submissions and therefore treats its motion as a motion for summary judgment.

A motion for summary judgment will be granted only if there exists no genuine issue as to any material fact and the moving party is entitled to

judgment as a matter of law. Fed.R.Civ.P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S, 242, 250 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). A material fact is one that may affect the outcome of the suit. Anderson, 477 U.S. at 248. In assessing a motion for summary judgment, the court must view the facts, and all inferences justifiably drawn therefrom, in the light most favorable to the nonmoving party. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587–88 (1986). The court must decide whether there is a genuine issue for trial, "not ... weigh the evidence and determine the truth of the matter." Anderson, 477 U.S. at 249.

Judicial Review of an FNS Decision to Disqualify a SNAP Retailer

Judicial review of an FNS decision to disqualify a retailer from SNAP is to be conducted de novo. 7 U.S.C. § 2023(a)(15). The retailer has the burden of establishing by a preponderance of the evidence that the agency determination should be set aside. AJS Petroleum, Inc. v. United States, 2012 WL 683538, at *4 (D. Md. Mar. 1, 2012); 2341 E. Fayette St., Inc. v. United States, 2005 WL 2373696, at * 1 (D. Md. Sept. 26, 2005). In reviewing the agency's decision according to this standard, the court is not bound by the administrative record. See, e.g., Kim v. United States, 121 F.3d 1269, 1272 (9th Cir. 1997); Ibrahim v. United States, 834 F.2d 52, 53–54 (2d Cir. 1987); Modica v. United States, 518 F.2d 374, 376 (5th Cir. 1975). If the court determines that no genuine issue of material fact is presented, it can resolve the issue by way of a motion for summary judgment. See, e.g., Idias v. United States 359 F.3d 695 (4th Cir. 2004); Bon

Supermarket & Deli v. United States, 87 F. Supp. 2d 593, 599–600 (E.D. Va. 2000).

If the court concludes that a violation has occurred, it must then review the penalty issued by the FNS. See Cross v. United States, 512 F.2d 1212, 1215 (4th Cir. 1975) ("the scope of judicial review extends to the period of administrative sanction"). This review is to be conducted according to an "arbitrary and capricious" standard. See, e.g., Mahmood v. United States, 2012 WL 3038638, at *2 (D. Md. July 24, 2012); 2341 E. Fayette St., Inc., 2005 WL 237696, at *1. Thus, if the court finds that violations in fact occurred, the penalty issued by the FNS will be upheld unless the decision to impose that penalty was arbitrary or capricious.

ANALYSIS

I. The Finding That Trafficking Occurred

The FNS's determination that the Store engaged in trafficking is supported by the administrative record and Negash has failed to offer any credible argument to the contrary. The decision to hold a SNAP retailer liable for trafficking can be made even where the retailer is not caught red-handed exchanging SNAP benefits for cash or consideration other than eligible food. See, e.g., AJS Petroleum, Inc. v. United States, 2012 WL 683538, at *5 (D. Md. Mar. 1, 2012). Indeed, the decision can be made based on "facts established through on-site investigations, inconsistent redemption data, and evidence established through a transaction report under an electronic benefits transfer system." See 7 U.S.C. § 2021(a)(2); see also 7 C.F.R. § 278.6(a).

In this case "a transaction report under an electronic benefits transfer system" indicated that the Store had engaged in suspicious transactions of three kinds: (1) rapid and repetitive transactions in a short period of time from the same household (A.R. 88–91); (2) transactions involving the depletion of the majority or all of a household's benefits in a short timeframe (A.R. 92–94); and (3) high dollar transactions (A.R. 95–100). Based on this electronic alert, the FNS conducted an investigation into the Store. This investigation included an "on-site investigation" which revealed that the store was a typical convenience store rather than a primary grocer. (See A.R. 298–99). It also included a comparison of the Store's transactions to those of similarly situated stores—including four other convenience stores within a one-mile radius—which revealed "inconsistent redemption data." (See A.R. 81–82).

In light of these undisputed facts, Negash clearly overstates the role the electronic alert system played in the FNS's ultimate decision. (See ECF No. 17–1, pp. 8–9). The electronic alert system triggered the investigation, but an "on-site investigation" and "inconsistent redemption data" were considered before the FNS determined that "trafficking" occurred. Therefore, the court finds Negash's attacks on the FNS's use of its electronic alert system wholly unpersuasive.

Likewise, the court finds Negash's explanations for the suspicious transactions—largely the same explanations offered at the administrative review stage—unpersuasive. The court will not address each of these explanations seriatim. Instead, the court points out that Negash has not attempted to explain

the clearest evidence that trafficking occurred, namely, that the number of suspicious transactions diminished sharply and precipitously once he learned the FNS suspected him of trafficking. The FNS sent Negash an initial charge letter on August 11, 2016. (A.R. 85–87). Upon receipt of that letter, the number of balance-depleting transactions diminished from nearly five per month from February through July 2016 to zero in August 2016 and zero in September 2016. (A.R. 328). The number of excessively-large transactions diminished from nearly fifty per month from February through July 2016 to twenty-three in August 2016 and eight in September 2016. Id. Finally, the number of rapid and repetitive transactions diminished from nearly ten per month from February through July 2016 to six in August 2016 and zero in September 2016. Id. Absent any explanation to the contrary, the court draws the only logical conclusion possible based on this evidence: from February to August 11, 2016, Negash and the Store were trafficking in EBT benefits.

II. The Decision to Impose a Penalty of Permanent Disqualification

In light of its finding that the Store engaged in "trafficking," the FNS's decision to permanently disqualify the Store from SNAP was not "arbitrary and capricious." Permanent disqualification is almost always the appropriate sanction where a retailer is caught trafficking in food stamps. See 7 U.S.C. § 2021(b)(3)(B); 7 C.F.R. § 278.6(e)(1)(i). In fact, the FNS has discretion to impose a CMP instead of a penalty of permanent disqualification only where a retailer demonstrates that a rogue employee engaged in trafficking despite the store's implementation of an

effective compliance policy and program. See 7 U.S.C. § 2021(b)(3)(B); 7 C.F.R. § 278.6(i). Negash has not made such a showing.

Moreover, according to 7 C.F.R. § 278.6(b)(2)(iii), "if a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified ... the firm shall not be eligible for such a penalty." Negash requested an extension to file a response to the initial charging letter after the end of the specified ten-day period. (A.R. 103). He acknowledged that, "in doing so we will forfeit our right to request the issuance of a civil money penalty in lieu of other sanctions." Id. Thus, Negash explicitly waived his right to request a CMP, a penalty the FNS would not have had discretion to impose in any event. Accordingly, the FNS's decision to permanently disqualify the Store from SNAP was not "arbitrary and capricious."

CONCLUSION

For the foregoing reasons, defendants' motion for summary judgment is granted. A separate order follows.

United States District Court District of Maryland
2018 WL 3428716

ISRAEL K. NEGASH, et al.,
Plaintiff, v.
UNITED STATES OF AMERICA,
Defendant.

1:17-cv-01954-RDB
Signed July 16th, 2018

MEMORANDUM OPINION

Richard D. Bennett, United States DistrictJudge

On February 20, 2018, Plaintiffs Ethio, Inc. and Israel K. Negash (collectively "Plaintiffs"), filed an Amended Motion for Reconsideration (ECF No. 23)[1] based upon this Court's previous Memorandum Opinion and Order granting the Defendant United States of America's ("Defendant") Motion for Summary Judgment. (ECF Nos. 20, 21.) On March 1, 2018, the Defendant filed its Response in Opposition

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[1] Plaintiffs' first Motion for Reconsideration is MOOT. (ECF No. 22.)

to the Plaintiffs' Motion for Reconsideration, arguing that the Plaintiffs are not entitled to relief under Rule 59(e) of the Federal Rules of Civil Procedure. (ECF No. 24.) The pending Motion was fully briefed by both parties and no hearing is necessary. See Local Rule 105.6 (D. Md. 2014). For the reasons that follow, Plaintiffs' Motion for Reconsideration (ECF No. 23) is DENIED.[2]

BACKGROUND

The background facts of this case are set forth in this Court's Memorandum Opinion on February 5, 2018. (ECF No. 20); Negash v. United States, Civ. No. RDB-17-1954, 2018 WL 722481 (D. Md. Feb. 5, 2019).

To summarize, Plaintiff Negash ("Negash") is the owner and operator of Ethio, Inc., d/b/a Sunoco Food Mart ("the Store") in Baltimore, Maryland. Id. at *1. In May 2001, the Store began participating in the Supplemental Nutrition Assistance Program ("SNAP"). Id. Pursuant to regulations governing SNAP retailers, the Food and Nutrition Service ("FNS")[3] is authorized to permanently disqualify any

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[2] On April 6, 2018, Plaintiffs also submitted an Ex Parte Motion for Extension of Time to File Appeal fourteen (14) days after this Court's entry of the order. (ECF No. 25.) This Motion is GRANTED.

[3] SNAP is a government program operated by the FNS, a component of the United States Department of Agriculture ("USDA"). See 7 C.F.R. § 271.3.

SNAP retailer that it finds "trafficking"[4] SNAP benefits. See 7 C.F.R. § 278.6.

Between February and July 2016, the FNS electronic alert system indicated that the Store's Electronic Benefits Transfer ("EBT")[5] data was consistent with possible trafficking in EBT benefits. Negash, 2018 WL 722481, at *3. As a result, the FNS Retailer Operations Division ("ROD") began an investigation into the Store and subsequently sent an individual from ROD to visit the Store on June 18, 2016. Id. ROD also compared the Store's transactions to those of other stores in the area, including four other convenience stores within a one-mile radius. Id. After analyzing all of the information gathered during its investigation, ROD determined that the transactions discovered by the FNS electronic system were, in fact, suspicious, and inconsistent with the transactions of other similarly situated SNAP retailers. Id. The Store's suspicious transactions fell into three categories: (1) rapid and repetitive transactions in a short period of time from the same

[4] "Trafficking" is defined in pertinent part as "buying, selling, stealing or otherwise effecting an exchange of SNAP benefits issued and accessed via (EBT) cards ... for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone." 7 C.F.R. § 271.2.

[5] SNAP beneficiaries are awarded benefits in the form of an Electronic Benefits Transfer ("EBT") card, which is akin to a debit card and can be used only for the purchase of food and certain other eligible items sold by approved SNAP retailers. See id. §§ 2013(a), 2016(j); see also 7 C.F.R. 271.2.

household; (2) transactions involving the depletion of the majority or all of a household's benefits in a short timeframe; and (3) high dollar transactions. Id.

On August 11, 2016, the FNS sent a letter to Negash, informing him that the Store was being charged with trafficking EBT benefits under 7 C.F.R. § 271.2.[6] Negash, 2018 WL 722481, at *4. Eventually, Negash responded to the substantive allegations, offering a litany of explanations for the suspicious transactions.[7] Id. After inquiring into Negash's explanations, FNS found: (1) no evidence the Store was anything but a typical convenience store; (2) and Negash's other explanations did not account for the suspicious transactions. Id. On September 20, 2017, the FNS issued a determination letter informing Negash that it found the Store had engaged in trafficking SNAP benefits and was therefore permanently disqualified from participation in SNAP. Id.

Negash sought an administrative review of the decision to disqualify the Store, reiterating many of the same explanations offered in response to the

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[6] The letter stated that Negash had a right to explain the suspicious charges and a right-within ten days-to request a CMP ("Civil Money Penalty") in lieu of permanent disqualification. Id. at *3-4.

[7] The explanations offered by Negash primarily revolved around the notion that the Store was not a typical convenience store/gas station, but was instead the primary grocer for many individuals. Id. at *4.

initial charge letter. Id. An FNS Administrative Review Officer ("ARO") reviewed the information submitted by Negash and then issued a Final Agency Decision on June 13, 2017. Id. The ARO found, among other things, that the Store was simply a typical convenience store/gas station, and that its inventory did not lend itself to the many large, suspicious transactions at issue. Id. It also noted that following the Store's receipt of the initial charge letter there was a precipitous decline in the number of suspicious transactions—a fact that was in itself suspicious. Id. Therefore, the ARO upheld both the decision that "trafficking" had occurred and the decision to permanently disqualify the Store from the SNAP program. Id. On July 13, 2017, Negash filed a Complaint with this Court requesting a judicial review of the FNS determination. (ECF No. 1.)

STANDARD OF REVIEW

The Federal Rules of Civil Procedure do not expressly recognize motions for "reconsideration." Instead, Rule 59(e) authorizes a district court to alter, amend, or vacate a prior judgment, and Rule 60 provides for relief from judgment. See Katyle v. Penn Nat'l Gaming, Inc., 637 F.3d 462, 471 n.4 (4th Cir. 2011), cert. denied, 132 S. Ct. 115 (2011). As this Court explained in Cross v. Fleet Reserve Ass'n Pension Plan,

Civ. No. WDQ-05-0001, 2010 WL 3609530, at *2 (D. Md. Sept. 14, 2010):

A party may move to alter or amend a judgment under Rule 59(e), or for relief from a judgment under Rule 60(b). See Fed. R. Civ. P. 59(e) & 60(b). A motion to alter or amend filed within 28 days of the judgment is analyzed under Rule 59(e); if the motion is filed later, Rule 60(b) controls. See Fed. R. Civ. P. 59(e); MLC Auto., LLC v. Town of S. Pines, 532 F.3d 269, 280 (4th Cir. 2008); In re Burnley, 988 F.2d 1, 2-3 (4th Cir. 1992).

(footnote omitted). In this case, Negash timely filed his Motion for Reconsideration (ECF No. 23) within twenty-eight (28) days of this Court's Order granting Defendant's Motion for Summary Judgment. (ECF No. 21.) Thus, Plaintiff Negash's Motion will be considered under Rule 59(e).

The United States Court of Appeals for the Fourth Circuit has repeatedly recognized that a final judgment[8] may be amended under Rule 59(e) in only three circumstances: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct

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[8] Rule 59(e) applies only to final judgments. See Fayetteville Investors v. Commercial Builders, Inc., 936 F.2d 1462, 1469 (4th Cir. 1991)

a clear error of law or prevent manifest injustice. See, e.g., Gagliano v. Reliance Standard Life Ins. Co., 547 F.3d 230, 241 n.8 (4th Cir. 2008); see also Fleming v. Maryland National Capital Park & Panning Commission, Civ. No. DKC-11-2769, 2012 WL 12877387, at *1 (D. Md. Mar. 8, 2012). A Rule 59(e) motion "may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to entry of judgment." Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998); see also Kelly v. Simpson, Civ. No. RDB-16-4067, 2017 WL 4065820, at *1 (D. Md. Jan. 26, 2017). Moreover, "[t]he district court has considerable discretion in deciding whether to modify or amend a judgment." Fleming, 2012 WL 12877387, at *1.

ANALYSIS

Plaintiff Negash alleges that this Court's Order granting Defendant's Motion for Summary Judgment was improper because: (1) summary judgment was granted without affording Negash an opportunity for discovery; and (2) the correlation between the electronic alert system's transaction patterns and EBT trafficking was accepted "despite no evidence being presented to establish a connection." (ECF No. 23.) Negash claims he was "entitled" to discovery before this Court made its ruling because "material issues of fact [still] remain[ed] for evidentiary

presentation" and discovery was necessary in order to "fully review the allegations brought against [him]" and to "gather evidence to rebut the allegations." (Id. at 4, 6.) Negash also contends that he has "repeatedly disputed that the ALERT system's transaction patterns have any relevant relation to trafficking" and criticizes this Court for "accept[ing] this correlation despite no evidence being presented to establish such a connection ...." (Id. at 8.) In addition, Negash now proceeds to add a new claim that the Store's permanent disqualification from SNAP violated his "right to Substantive Due Process under the Fifth Amendment." (Id. at 9.)

A. Relitigating Previous Arguments Under Rule 59(e)

As explained previously, a Rule 59(e) motion "may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to entry of judgment." Pac. Ins. Co., 148 F.3d at 403; see also Kelly, 2017 WL 4065820, at *1. Here, Plaintiff Negash's demands for discovery and his contentions questioning the relationship between the electronic alert system data and EBT trafficking were previously raised and considered by this Court in Plaintiffs' Response in Opposition to Defendant's Motion for Summary Judgment. (ECF No. 17.) After Negash's arguments were assessed, this Court found "that the Store engaged in trafficking is supported by

the administrative record and [Plaintiffs] ha[ve] failed to offer any credible argument to the contrary." Negash, 2018 WL 722481, at *3, 4. In addition, this Court also found Negash's "attacks on the FNS's use of its electronic alert system [to be] wholly unpersuasive." Id. at *4. Therefore, Negash's request for relief under Rule 59(e) is improper because it "merely reiterates arguments [the] Court previously rejected in its Memorandum Opinion[.]" Redner's Markets, Inc. v. Joppatown G.P. Ltd. P'ship, Civ. No. RDB-11-1864, 2013 WL 5274356, at *8 (D. Md. Sept. 17, 2013).

B. Presentation of New Argument

Negash also attempts to raise a new claim that the Store's permanent disqualification from SNAP violated his rights to due process. (ECF No. 23 at 9-10.) However, unlike previous complaints seeking de novo judicial review of FNS's permanent disqualification of a SNAP retailer, Negash's one-count Complaint did not allege that the Store's permanent disqualification from SNAP violated Negash's substantive due process rights. (ECF No. 1.) See, e.g., Hanif v. United States, Civ. No. H-15-2718, 2017 WL 447465, at *7 (S.D. Tex. Feb. 2, 2017); Alhalemi, Inc. v. United States, 224 F. Supp. 3d 587, 589 (E.D. Mich. 2016); Duchimaza v. United States, 211 F. Supp. 3d 421, 440 (D. Conn. 2016). Although Negash referenced due process in his Response in Opposition to Defendant's Motion for Summary

Judgment, he did not apply the factors implicated in a substantive due process claim nor did he reference any case law. (ECF No. 17 at 5, 6, 23, 24.) Because this due process claim could have been raised previously, Negash is barred from now bringing it under Rule 59(e). See, e.g., Pac. Ins. Co., 148 F.3d at 404 ("Rule 59(e) may not be used to raise new arguments ... that could have been raised prior to judgment"); Kelly, 2017 WL 4065820, at *1 (D. Md. Jan. 26, 2017) ("[T]he Fourth Circuit has cautioned that a party may not use a Rule 59(e) motion to raise arguments which could have been raised prior to the issuance of the judgment ...") (internal quotation marks omitted).

C. No Clear Error of Law or Manifest Injustice

Further, relief is not necessary to "correct a clear error of law or prevent manifest injustice."[9] See, e.g., Gagliano, 547 F.3d at 241 n.8; see also Fleming, 2012 WL 12877387, at *1. This Court has emphasized that "[c]lear error or manifest injustice occurs where a court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an

[9] Plaintiff Negash fails to explain on which of the limited grounds for reconsideration his Motion is based. (ECF No. 23.) Because Negash does not assert an intervening change in controlling law or present newly discovered evidence, presumably he contends that this Court must "correct clear error of law or prevent manifest injustice." See, e.g., Gagliano, 547 F.3d at 241 n.8; see also Fleming, 2012 WL 12877387, at *1.

error not of reasoning but of apprehension " Wagner v. Warden, Civ. No. ELH-14-791, 2016 WL 1169937, at *3 (D. Md. Mar. 24, 2016) (internal quotation marks omitted). "When a party argues that Rule 59(e) relief is necessary to correct a clear error of law or to prevent manifest injustice, mere disagreement with the Court's previous decision will not suffice." June v. Thomasson, Civ. No. GLR-14-2450, 2016 WL 7374432, at *3 (D. Md. Dec. 20, 2016). Instead, to justify altering or amending a judgment on this basis, "the prior judgment cannot be 'just maybe or probably wrong; it must ... strike the court as wrong with the force of a five-week-old, unrefrigerated dead fish.' " Id. (quoting Fontell v. Hassett, 891 F. Supp. 2d 739, 741 (D. Md. 2012)); see also Bellsouth Telesensor v. Info. Sys. & Networks Corp., 65 F.3d 166 (4th Cir. 1995). In other words, the Court's previous judgment must be "dead wrong." See TFWS, Inc. v. Franchot, 572 F.3d 186, 194 (4th Cir. 2009). "In general, reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." Id. (internal citations and quotation marks omitted); see also Jarvis v. Berryhill, Civ. No. TMD-15-2226, 2017 WL 467736, at *2 (D. Md. Feb. 3, 2017).

Negash is not "entitled" to discovery in this case. In fact, Negash had the opportunity to provide evidence rebutting the FNS's determination. See Negash, 2018 WL 722481, at *4 ("[This] [C]ourt finds

Negash's explanations for the suspicious transactions—largely the same explanations offered at the administrative review stage—unpersuasive."). In Negash's Motion, he cites H.T. Saunders vs. United States, 507 F.2d 33 (6th Cir. 1974), as "one of the more well outlined SNAP review cases," which "outline[s] what task rests before the District [C]ourt." (ECF No. 23 at 2-3.) In that case, the Sixth Circuit concluded that:

"Since the procedures followed at the administrative level do not provide for discovery or testing the evidence of the Department of Agriculture by cross- examination, it is particularly important that an aggrieved person who seeks judicial review in a trial de novo not be deprived of these traditional tools unless it is clear that no issue of fact exists."

H.T. Saunders, 507 F.2d 33 at 36 (emphasis added). Here, this Court concluded that no issue of fact existed when the determination of FNS "that the Store engaged in trafficking [was] supported by the administrative record and [Plaintiffs] had failed to offer any credible argument to the contrary." See Negash, 2018 WL 722481, at *3. Additionally, the types of discovery Negash seeks would not create a genuine issue of material fact. Negash contends that

he is entitled to discover the identities of households whose EBT data was contained in the administrative record in addition to the identities of the comparison stores. (ECF No. 23 at 3, 5, 6, 7, 9.) However, Negash fails to articulate how these identities will create any dispute of material fact as to each of the hundreds of suspicious transfers that FNS identified.[10] This Court has continually granted pre-discovery judgment in favor of the United States in numerous SNAP cases and therefore, Plaintiff Negash's demand for discovery fails. See 7-Eleven, Inc. v. United States, Civ. No. GLR-15-0543, 2016 WL 5107129, at *3-4 (D. Md. Jan. 29, 2016); Mahmood v. United States, Civ. No. WMN-12-0228, 2012 WL 3038638, at *1 n.4; AJS Petroleum, Inc. v. United States, Civ. No. L-11-1085, 2012 WL 683538, at *5 (D. Md. Mar. 1, 2012); Bernal Deli Grocery v. United States, Civ. No. MJG-10-1761 (D. Md. Aug. 26, 2011).

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[10] Additionally, Negash's reliance on Randallstown International Market, LLC v. United States, Civil No. GLR-16-4050 (D. Md. Dec. 20, 2016)—currently pending in this Court—is misguided. Negash relies on Randallstown as a case in which this Court "permitted discovery," contending that if this Court "had ruled [in Randallstown] the way that this Court has [in this case], the plaintiffs in that matter would never have had an opportunity to discover ... bias and problems with the Defendant's judgment." (ECF No. 23 at 8.) However, in Randallstown, this Court did not "permit" or "rule" that the plaintiffs in that case were entitled to discovery, but rather plaintiffs conducted discovery after the United States filed an answer to the complaint. See Randallstown, Civil No. GLR-16-04050.

This Court also finds Plaintiff Negash's argument criticizing the correlation between the electronic alert system's transaction patterns and EBT trafficking unavailing. Pursuant to 7 U.S.C. § 2021(a)(2), federal regulations may provide criteria for the "disqualification of ... a retail food store ... on the basis of evidence that may include facts established through ... inconsistent redemption data, or evidence obtained through a transaction report under an electronic benefit transfer system." See 7 C.F.R. § 276.8(a). Further, the Fourth Circuit has also allowed the Government to rely on EBT transaction reports as circumstantial evidence "[t]o prove that trafficking has taken place." ANS Food Market v. United States, Civil No. JKB-14-2071, 2015 WL 1880155, at *2 (D. Md. Apr. 22, 2015); see also Idias v. United States, 359 F.3d 695 (4th Cir. 2004). Additionally, while the electronic alert system triggered the investigation, an "on-site investigation" and "inconsistent redemption data" were considered before the FNS determined that "trafficking" occurred. Negash, 2018 WL 722481, at *4. Although Negash admits that an "on-site inventory"[11] was

[11] Plaintiff Negash contends "there was no on-site investigation," but then admits "there was an on-site inventory that was conducted ...." (ECF No. 23 at 5.) However, it has been established on the record that a contractor for FNS conducted a store visit in June 2016, to which the Plaintiffs consented. See Administrative Record, ECF No. 9-2 at 30-31.)

conducted, he emphasizes that no violations were observed. (ECF No. 23 at 5.) However, as this Court previously stated, the "decision to hold a SNAP retailer liable for trafficking can be made even where the retailer is not caught red-handed exchanging SNAP benefits for cash or consideration other than eligible food." Negash, 2018 WL 722481, at *3 (citing AJS Petroleum, 2012 WL 683538, at *5) (emphasis added). In this case, given the fully developed administrative record, together with Negash's inability to present a genuine dispute of material fact, Defendant was entitled to summary judgment in its favor. See AJS Petroleum, 2012 WL 683538, at *5 ("Because additional discovery would not change the factual landscape in this case, an analysis under the summary judgment standard is appropriate.").

Finally, even if Negash had raised a substantive due-process argument previously, the Fourth Circuit has held that the SNAP- disqualification scheme is constitutional on substantive due-process grounds. See Traficanti v. United States, 277 F.3d 170, 174 (4th Cir. 2000) (rejecting plaintiff's procedural and substantive due process claims with regard to its permanent disqualification from the food stamp program); Bon Supermarket & Deli v. United States, 87 F. Supp. 2d 593, 604 (E.D. Va. 2000) (finding that "the permanent disqualification is rationally related to the purposes of

the food stamp program and, therefore, does not violate plaintiffs' substantive due process rights."). Nor could Negash argue that pre-discovery summary judgment violated his substantive due-process rights. This Court has held several times that pre-discovery summary judgment is appropriate where the administrative record supports the conclusion that a SNAP retailer was trafficking in benefits. See 7-Eleven, Inc., 2016 WL 5107129, at *3-4 (D. Md. Jan. 29, 2016); Mahmood, 2012 WL 3038638, at *1 n.4; AJS Petroleum, Inc., 2012 WL 683538, at *5; Bernal Deli Grocery, Civ. No. MJG-10-1761 (D. Md. Aug. 26, 2011). In sum, Plaintiff Negash has failed to bring forth issues that rise to the level of a "clear error of law" or reflect a "manifest injustice," and his Motion for Reconsideration (ECF No. 23) is DENIED.

CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Reconsideration (ECF No. 23) as to this Court's Memorandum and Order granting summary judgment in Defendant's favor is DENIED. Plaintiffs' Ex Parte Motion for Extension of Time to File Appeal (ECF No. 25) fourteen (14) days after the date of this

Court's Order is GRANTED. A separate order

follows.

APPENDIX B

7 U.S.C. §2021. CIVIL PENALTIES AND DISQUALIFICATION OF RETAIL FOOD STORES AND WHOLESALE FOOD CONCERNS.

(a) Disqualification

(1) In general

An approved retail food store or wholesale food concern that violates a provision of this chapter or a regulation under this chapter may be--

(A) disqualified for a specified period of time from further participation in the supplemental nutrition assistance program;

(B) assessed a civil penalty of up to $100,000 for each violation; or

(C) both.

(2) Regulations

Regulations promulgated under this chapter shall provide criteria for the finding of a violation of, the suspension or disqualification of and the assessment of a civil penalty against a retail food store or wholesale food concern on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, or evidence obtained through a transaction report under an electronic benefit transfer system.

(b) Period of disqualification

Subject to subsection (c), a disqualification under subsection (a) shall be--

(1) for a reasonable period of time, not to exceed 5 years, upon the first occasion of disqualification;

(2) for a reasonable period of time, not to exceed 10 years, upon the second occasion of disqualification;

(3) permanent upon--

(A) the third occasion of disqualification;

(B) the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards, except that the Secretary shall have the discretion to impose a civil penalty of up to $20,000 for each violation (except that the amount of civil penalties imposed for violations occurring during a single investigation may not exceed $40,000) in lieu of disqualification under this subparagraph, for such purchase of coupons or trafficking in coupons or cards that constitutes a violation of the provisions of this chapter or the regulations issued pursuant to this chapter, if the Secretary determines that there is substantial evidence that such store or food concern had an effective policy and

program in effect to prevent violations of the chapter and the regulations, including evidence that--

(i) the ownership of the store or food concern was not aware of, did not approve of, did not benefit from, and was not involved in the conduct of the violation; and

(ii) (I) the management of the store or food concern was not aware of, did not approve of, did not benefit from, and was not involved in the conduct of the violation; or

(II) the management was aware of, approved of, benefited from, or was involved in the conduct of no more than 1 previous violation by the store or food concern; or

(C) a finding of the sale of firearms, ammunition, explosives, or controlled substance (as defined in section 802 of Title 21) for coupons, except that the Secretary shall have the discretion to impose a civil penalty of up to $20,000 for each violation (except that the amount of civil penalties imposed for violations occurring during a single investigation may not exceed $40,000) in lieu of disqualification under this subparagraph if the Secretary determines that there is substantial evidence (including evidence that neither the ownership nor management of the store or food concern was

aware of, approved, benefited from, or was involved in the conduct or approval of the violation) that the store or food concern had an effective policy and program in effect to prevent violations of this chapter; and

(4) for a reasonable period of time to be determined by the Secretary, including permanent disqualification, on the knowing submission of an application for the approval or reauthorization to accept and redeem coupons that contains false information about a substantive matter that was a part of the application.

(c) Civil penalty and review of disqualification and penalty determinations

(1) Civil penalty

In addition to a disqualification under this section, the Secretary may assess a civil penalty in an amount not to exceed $100,000 for each violation.

(2) Review

The action of disqualification or the imposition of a civil penalty shall be subject to review as provided in section 2023 of this title.

(d) Conditions of authorization

(1) In general

As a condition of authorization to accept and redeem benefits, the Secretary may require a retail food store or wholesale food concern that, pursuant to subsection (a), has been disqualified for more

than 180 days, or has been subjected to a civil penalty in lieu of a disqualification period of more than 180 days, to furnish a collateral bond or irrevocable letter of credit for a period of not more than 5 years to cover the value of benefits that the store or concern may in the future accept and redeem in violation of this chapter.

(2) Collateral

The Secretary also may require a retail food store or wholesale food concern that has been sanctioned for a violation and incurs a subsequent sanction regardless of the length of the disqualification period to submit a collateral bond or irrevocable letter of credit.

(3) Bond requirements

The Secretary shall, by regulation, prescribe the amount, terms, and conditions of such bond.

(4) Forfeiture

If the Secretary finds that such store or concern has accepted and redeemed coupons in violation of this chapter after furnishing such bond, such store or concern shall forfeit to the Secretary an amount of such bond which is equal to the value of coupons accepted and redeemed by such store or concern in violation of this chapter.

(5) Hearing

A store or concern described in paragraph (4) may obtain a hearing on such forfeiture pursuant to section 2023 of this title.

(e) Transfer of ownership; penalty in lieu of disqualification period; fines for acceptance of loose coupons; judicial action to recover penalty or fine

(1) In the event any retail food store or wholesale food concern that has been disqualified under subsection (a) is sold or the ownership thereof is otherwise transferred to a purchaser or transferee, the person or persons who sell or otherwise transfer ownership of the retail food store or wholesale food concern shall be subjected to a civil penalty in an amount established by the Secretary through regulations to reflect that portion of the disqualification period that has not yet expired. If the retail food store or wholesale food concern has been disqualified permanently, the civil penalty shall be double the penalty for a ten-year disqualification period, as calculated under regulations issued by the Secretary. The disqualification period imposed under subsection

(b) shall continue in effect as to the person or persons who sell or otherwise transfer ownership of the retail food store or wholesale food concern notwithstanding the imposition of a civil penalty under this subsection.

(2) At any time after a civil penalty imposed under paragraph (1) has become final under the provisions of section 2023(a) of this title, the Secretary may request the Attorney General to institute a civil action against the person or persons subject to the penalty in a district court of the United States for any district in which such person or persons are found, reside, or transact business to collect the penalty and such court shall have jurisdiction to hear and decide such action. In such action, the validity and amount of such penalty shall not be subject to review.

(3) The Secretary may impose a fine against any retail food store or wholesale food concern that accepts food coupons that are not accompanied by the corresponding book cover, other than the denomination of coupons used for making change as specified in regulations issued under this chapter. The amount of any such fine shall be established by the Secretary and may be assessed and collected in accordance with regulations issued under this chapter separately or in combination with any fiscal claim established by the Secretary. The Attorney General of the United States may institute judicial action in any court of competent jurisdiction against the store or concern to collect the fine.

(f) Fines for unauthorized acceptance

The Secretary may impose a fine against any person not approved by the Secretary to accept and redeem food coupons who violates any provision of this chapter or a regulation issued under this chapter, including violations concerning the acceptance of food coupons. The amount of any such fine shall be established by the Secretary and may be assessed and collected in accordance with regulations issued under this chapter separately or in combination with any fiscal claim established by the Secretary. The Attorney General of the United States may institute judicial action in any court of competent jurisdiction against the person to collect the fine.

(g) Disqualification of retailers who are disqualified under the WIC program

(1) In general

The Secretary shall issue regulations providing criteria for the disqualification under this chapter of an approved retail food store or a wholesale food concern that is disqualified from accepting benefits under the special supplemental nutrition program for women, infants, and children established under section 1786 of Title 42.

(2) Terms

A disqualification under paragraph (1)--

(A) shall be for the same length of time as the disqualification from the program referred to in paragraph (1);

(B) may begin at a later date than the disqualification from the program referred to in paragraph (1); and

(C) notwithstanding section 2023 of this title, shall not be subject to judicial or administrative review.

(h) Flagrant violations

(1) In general

The Secretary, in consultation with the Inspector General of the Department of Agriculture, shall establish procedures under which the processing of program benefit redemptions for a retail food store or wholesale food concern may be immediately suspended pending administrative action to disqualify the retail food store or wholesale food concern.

(2) Requirements

Under the procedures described in paragraph (1), if the Secretary, in consultation with the Inspector General, determines that a retail food store or wholesale food concern is engaged in flagrant violations of this chapter (including regulations promulgated under this chapter), unsettled program benefits that have been redeemed by the retail food store or wholesale food concern--

(A) may be suspended; and

(B)(i) if the program disqualification is upheld, may be subject to forfeiture pursuant to section

2024(g) of this title; or (ii) if the program disqualification is not upheld, shall be released to the retail food store or wholesale food concern.

(3) No liability for interest

The Secretary shall not be liable for the value of any interest on funds suspended under this subsection.

(i) Pilot projects to improve Federal-State cooperation in identifying and reducing fraud in the supplemental nutrition assistance program

(1) Pilot projects required

(A) In general

The Secretary shall carry out, under such terms and conditions as are determined by the Secretary, pilot projects to test innovative Federal-State partnerships to identify, investigate, and reduce fraud by retail food stores and wholesale food concerns in the supplemental nutrition assistance program, including allowing States to operate programs to investigate that fraud.

(B) Requirement

At least 1 pilot project described in subparagraph (A) shall be carried out in an urban area that is among the 10 largest urban areas in the United States (based on population), if--

(i) the supplemental nutrition assistance program is separately administered in the area; and

(ii) if the administration of the supplemental nutrition assistance program in the area complies with the other applicable requirements of the program.

(2) Selection criteria

Pilot projects shall be selected based on criteria the Secretary establishes, which shall include--

(A) enhancing existing efforts by the Secretary to reduce fraud described in paragraph (1)(A);

(B) requiring participant States to maintain the overall level of effort of the States at addressing recipient fraud, as determined by the Secretary, prior to participation in the pilot project;

(C) collaborating with other law enforcement authorities as necessary to carry out an effective pilot project;

(D) commitment of the participant State agency to follow Federal rules and procedures with respect to investigations described in paragraph (1)(A); and

(E) the extent to which a State has committed resources to recipient fraud and the relative success of those efforts.

(3) Evaluation

(A) In general

The Secretary shall evaluate the pilot projects selected under this subsection to measure the impact of the pilot projects.

(B) Requirements

The evaluation shall include--

(i) the impact of each pilot project on increasing the capacity of the Secretary to address fraud described in paragraph (1)(A);

(ii) the effectiveness of the pilot projects in identifying, preventing and reducing fraud described in paragraph (1)(A); and

(iii) the cost effectiveness of the pilot projects.

(4) Report to Congress

Not later than September 30, 2017, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report that includes a description of the results of each pilot project, including--

(A) an evaluation of the impact of the pilot project on fraud described in paragraph (1)(A); and

(B) the costs associated with the pilot project.

(5) Funding

Any costs incurred by a State to operate pilot projects under this subsection that are in excess of the amount

expended under this chapter to identify, investigate, and reduce fraud described in paragraph (1)(A) in the respective State in the previous fiscal year shall not be eligible for Federal reimbursement under this chapter.

7 U.S.C. §2023. ADMINISTRATIVE AND JUDICIAL REVIEW; RESTORATION OF RIGHTS.

(a)(1) Whenever an application of a retail food store or wholesale food concern to participate in the supplemental nutrition assistance program is denied pursuant to section 2018 of this title, or a retail food store or wholesale food concern is disqualified or subjected to a civil money penalty under the provisions of section 2021 of this title, or a retail food store or wholesale food concern forfeits a bond under section 2021(d) of this title, or all or part of any claim of a retail food store or wholesale food concern is denied under the provisions of section 2022 of this title, or a claim against a State agency is stated pursuant to the provisions of section 2022 of this title, notice of such administrative action shall be issued to the retail food store, wholesale food concern, or State agency involved.

(2) Delivery of notices

A notice under paragraph (1) shall be delivered by any form of delivery that the Secretary determines will provide evidence of the delivery.

(3) If such store, concern, or State agency is

aggrieved by such action, it may, in accordance with regulations promulgated under this chapter, within ten days of the date of delivery of such notice, file a written request for an opportunity to submit information in support of its position to such person or persons as the regulations may designate.

(4) If such a request is not made or if such store, concern, or State agency fails to submit information in support of its position after filing a request, the administrative determination shall be final.

(5) If such request is made by such store, concern, or State agency, such information as may be submitted by the store, concern, or State agency, as well as such other information as may be available, shall be reviewed by the person or persons designated by the Secretary, who shall, subject to the right of judicial review hereinafter provided, make a determination which shall be final and which shall take effect thirty days after the date of the delivery or service of such final notice of determination.

(6) Determinations regarding claims made pursuant to section 2025(c) of this title (including determinations as to whether there is good cause for not imposing all or a portion of the penalty) shall be made on the record after opportunity for an agency hearing in accordance with section[1] 556 and 557 of Title 5 in which one or more administrative law judges

appointed pursuant to section 3105 of such title shall preside over the taking of evidence.

(7) Such judges shall have authority to issue and enforce subpoenas in the manner prescribed in sections[2] 499m(c) and (d) of this title and to appoint expert witnesses under the provisions of Rule 706 of the Federal Rules of Evidence.

(8) The Secretary may not limit the authority of such judges presiding over determinations regarding claims made pursuant to section 2025(c) of this title.

(9) The Secretary shall provide a summary procedure for determinations regarding claims made pursuant to section 2025(c) of this title in amounts less than
$50,000.

(10) Such summary procedure need not include an oral hearing.

(11) On a petition by the State agency or sua sponte, the Secretary may permit the full administrative review procedure to be used in lieu of such summary review procedure for a claim of less than $50,000.

(12) Subject to the right of judicial review hereinafter provided, a determination made by an administrative law judge regarding a claim made pursuant to section 2025(c) of this title shall be final and shall take effect thirty days after the date of the delivery or service of final notice of such determination.

(13) If the store, concern, or State agency feels aggrieved by such final determination, it may obtain

judicial review thereof by filing a complaint against the United States in the United States court for the district in which it resides or is engaged in business, or, in the case of a retail food store or wholesale food concern, in any court of record of the State having competent jurisdiction, within thirty days after the date of delivery or service of the final notice of determination upon it, requesting the court to set aside such determination.

(14) The copy of the summons and complaint required to be delivered to the official or agency whose order is being attacked shall be sent to the Secretary or such person or persons as the Secretary may designate to receive service of process.

(15) The suit in the United States district court or State court shall be a trial de novo by the court in which the court shall determine the validity of the questioned administrative action in issue, except that judicial review of determinations regarding claims made pursuant to section 2025(c) of this title shall be a review on the administrative record.

(16) If the court determines that such administrative action is invalid, it shall enter such judgment or order as it determines is in accordance with the law and the evidence.

(17) During the pendency of such judicial review, or any appeal therefrom, the administrative action under review shall be and remain in full force and

effect, unless on application to the court on not less than ten days' notice, and after hearing thereon and a consideration by the court of the applicant's likelihood of prevailing on the merits and of irreparable injury, the court temporarily stays such administrative action pending disposition of such trial or appeal.

(18) Suspension of stores pending review Notwithstanding any other provision of this subsection, any permanent disqualification of a retail food store or wholesale food concern under paragraph (3) or (4) of section 2021(b) of this title shall be effective from the date of receipt of the notice of disqualification. If the disqualification is reversed through administrative or judicial review, the Secretary shall not be liable for the value of any sales lost during the disqualification period.

(b) In any judicial action arising under this chapter, any allotments found to have been wrongfully withheld shall be restored only for periods of not more than one year prior to the date of the commencement of such action, or in the case of an action seeking review of a final State agency determination, not more than one year prior to the date of the filing of a request with the State for the restoration of such allotments or, in either case, not more than one year prior to the date the State agency is notified or otherwise discovers the possible loss to a household.

7 C.F.R. §271.2. DEFINITIONS
(Pertinent Language Only)
Trafficking means:

(1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;

(2) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits;

(3) Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;

(4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or

(5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.

(6) Attempting to buy, sell, steal, or otherwise affect an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

7 C.F.R. §278.6(1)-(d)(7). DISQUALIFICATION OF RETAIL FOOD STORES AND WHOLESALE FOOD CONCERNS, AND IMPOSITION OF CIVIL MONEY PENALTIES IN LIEU OF DISQUALIFICATIONS

(Language Pertaining to Disqualifications for SNAP Violations Only)

(a) Authority to disqualify or subject to a civil money penalty. FNS may disqualify any authorized retail food store or authorized wholesale food concern from further participation in the program if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under

an electronic benefit transfer system, or the disqualification of a firm from the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), as specified in paragraph (e)(8) of this section. Disqualification shall be for a period of 6 months to 5 years for the firm's first sanction; for period of 12 months to 10 years for a firm's second sanction; and disqualification shall be permanent for a disqualification based on paragraph (e)(1) of this section. Any firm which has been disqualified and which wishes to be reinstated at the end of the period of disqualification, or at any later time, shall file a new application under § 278.1 so that FNS may determine whether reauthorization is appropriate. The application may be filed no earlier than 10 days before the end of the period of disqualification. FNS may, in lieu of a disqualification, subject a firm to a civil money penalty of up to an amount specified in § 3.91(b)(3)(i) of this title for each violation if FNS determines that a disqualification would cause hardship to participating households. FNS may impose a civil money penalty of up to an amount specified in § 3.91(b)(3)(ii) of this title for each violation in lieu of a permanent disqualification for trafficking, as defined in § 271.2 of this chapter, in accordance with the provisions of paragraphs (i) and (j) of this section.

(b) Charge letter—

(1) General provisions. Any firm considered for disqualification or imposition of a civil money penalty under paragraph (a) of this section or a fine as specified under paragraph (l) or (m) of this section shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis fordisqualification or imposition of a civil money penalty or fine. The letter shall specify the violations or actions which FNS believes constitute a basis fordisqualification or imposition of a civil money penalty. The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter. The firm's response shall set forth a statement of evidence, information, or explanation concerning the specified violations or acts. The firm shall make its response, if any, to the officer in charge of the FNS field office which has responsibility for the project area in which the firm is located. In the case of a firm for which action is taken in accordance with paragraph (e)(8) of this section, the charge letter shall inform such firm that the

disqualification action is not subject to administrative or judicial review, as specified in paragraph (e)(8) of this section.

(2) Charge letter for trafficking.

(i) The charge letter shall advise a firm being considered for permanent disqualification based on evidence of trafficking as defined in § 271.2 that the firm must notify FNS if the firm desires FNS to consider the sanction of a civil money penalty in lieu of permanent disqualification. The charge letter shall also advise the firm that the permanent disqualification shall be effective immediately upon the date of receipt of the notice of determination, regardless of whether a request for review is filed in accordance with part 279 of this chapter. If the disqualification is reversed through administrative or judicial review, the Secretary shall not be liable for the value of any sales lost during the disqualification period. Firms that request and are determined eligible for a civil money penalty in lieu of permanent disqualification for trafficking may continue to participate in the program pending review and shall not be required to pay the civil money penalty pending appeal of the trafficking determination action.

(ii) Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence as specified in § 278.6(i), that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).

(iii) If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such a penalty.

(c) Review of evidence. The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance

with part 279 of this chapter. If the disqualification is reversed through administrative or judicial review, the Secretary shall not be liable for the value of any sales lost during the disqualification period. Firms that request and are determined eligible to a civil money penalty in lieu of permanent disqualification for trafficking may continue to participate in the program pending review and shall not be required to pay the civil money penalty pending appeal of the trafficking determination action. In the case of a firm for which action is taken in accordance with paragraph (e)(8) of this section, the determination notice shall inform such firm that the disqualification action is not subject to administrative or judicial review, as specified in paragraph (e)(8) of this section.

(d) Basis for determination. The FNS regional office making a disqualification or penalty determination shall consider:

(1) The nature and scope of the violations committed by personnel of the firm,

(2) Any prior action taken by FNS to warn the firm about the possibility that violations are occurring, and

(3) Any other evidence that shows the firm's intent to violate the regulations.

(e) Penalties. FNS shall take action as follows against any firm determined to have violated the Act or regulations. For the purposes of assigning a period of

disqualification, a warning letter shall not be considered to be a sanction. A civil money penalty and a disqualification shall be considered sanctions for such purposes. The FNS regional office shall:

(1) Disqualify a firm permanently if:

(i) Personnel of the firm have trafficked as defined in § 271.2; or

(ii) Violations such as, but not limited to, the sale of ineligible items occurred and the firm had twice before been sanctioned.

(iii) It is determined that personnel of the firm knowingly submitted information on the application that contains false information of a substantive nature that could affect the eligibility of the firm for authorization in the program, such as, but not limited to, information related to:

(A) Eligibility requirements under § 278.1(b), (c), (d), (e), (f), (g) and (h);

(B) Staple food stock;

(C) Annual gross sales for firms seeking to qualify for authorization under Criterion B as specified in the Food and Nutrition Act of 2008, as amended;

(D) Annual staple food sales;

(E) Total annual gross retail food sales for firms seeking authorization as co-located wholesale/retail firms;

(F) Ownership of the firm;

(G) Employer Identification Numbers and Social Security Numbers;

(H) SNAP history, business practices, business ethics, WIC disqualification or authorization status, when the store did (or will) open for business under the current ownership, business, health or other licenses, and whether or not the firm is a retail and wholesale firm operating at the same location; or

(I) Any other information of a substantive nature that could affect the eligibility of a firm.

(2) Disqualify the firm for 5 years if it is to be the firm's first sanction, the firm had been previously advised of the possibility that violations were occurring and of possible consequences of violating the regulations, and the evidence shows that:

(i) It is the firm's practice to sell expensive or conspicuous nonfood items, cartons of cigarettes, or alcoholic beverages in exchange for food coupons; or

(ii) The firm's coupon redemptions for a specified period of time exceed its food sales for the same period of time; or

(iii) A wholesale food concern's redemptions of coupons for a specified period of time exceed the

redemptions of all the specified authorized retail food stores, nonprofit cooperative food-purchasing ventures, group living arrangements, drug addict and alcoholic treatment programs, homeless meal providers, and shelters for battered women and children which the wholesale food concern was authorized to serve during that time; or

(iv) A wholesale food concern's stated redemptions of coupons for a particular retail food store, nonprofit cooperative food-purchasing venture, group living arrangement, drug addict and alcoholic treatment program, homeless meal providers, or shelters for battered women and children exceeded the actual amount of coupons which that firm or organization redeemed through the wholesaler; or

(v) Personnel of the firm knowingly accepted coupons from an unauthorized firm or an individual known not to be legally entitled to possess coupons.

(3) Disqualify the firm for 3 years if it is to be the first sanction for the firm and the evidence shows that:

(i) It is the firm's practice to commit violations such as the sale of common nonfood items in amounts normally found in a shopping basket

and the firm was previously advised of the possibility that violations were occurring and of the possible consequences of violating the regulations; or

(ii) Any of the situations described in paragraph (e)(2) of this section occurred and FNS had not previously advised the firm of the possibility that violations were occurring and of the possible consequences of violating the regulations; or

(iii) The firm is an authorized communal dining facility, drug addiction or alcoholic treatment and rehabilitation program, group living arrangement, homeless meal provider, meal delivery service, or shelter for battered women and children and it is the firm's practice to sell meals in exchange for food coupons to persons not eligible to purchase meals with food coupons and the firm has been previously advised of the possibility that violations were occurring and of the possible consequences of violating the regulations; or

(iv) A wholesale food concern accepted coupons from an authorized firm which it was not authorized to serve and the wholesale food concern had been previously advised of the possibility that violations were occurring and of

possible consequences of violating the regulations; or

(v) The firm is an authorized retail food store and personnel of the firm have engaged in food coupon transactions with other authorized retail stores, not including treatment programs, group living arrangements, homeless meal providers, or shelters for battered women and children, and the firm had been previously advised of the possibility that violations were occurring and of the possible consequences of violating the regulations.

(vi) Personnel of the firm knowingly submitted information on the application that contained false information of a substantive nature related to the ability of FNS to monitor compliance of the firm with FSP requirements, such as, but not limited to, information related to:

(A) Annual eligible retail food sales;

(B) Store location and store address and mailing address;

(C) Financial institution information; or

(D) Store name, type of ownership, number of cash registers, and non-food inventory and services.

(4) Disqualify the firm for 1 year if:

(i) It is to be the first sanction for the firm and the ownership or management personnel of the firm have committed violations such as thesale of common nonfood items in amounts normally found in a shopping basket, and FNS had not previously advised the firm of the possibility that violations were occurring and of the possible consequences of violating the regulations; or

(ii) The firm has accepted SNAP benefits in payment for items sold to a household on credit.

(5) Disqualify the firm for 6 months if it is to be the first sanction for the firm and the evidence shows that personnel of the firm have committed violations such as but not limited to the sale of common nonfood items due to carelessness or poor supervision by the firm's ownership or management.

(6) Double the appropriate period of disqualification prescribed in paragraphs (e) (2) through (5) of this section as warranted by the evidence of violations if the same firm has once before been assigned a sanction.

(7) Send the firm a warning letter if violations are too limited to warrant a disqualification.