

JUN 16 2023

No.

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**In the Supreme Court of the United States**

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SIMON V. KINSELLA

*Applicant,*

*v.*

BUREAU OF OCEAN ENERGY MANAGEMENT, ET AL.,

*Respondents,*

*and*

SOUTH FORK WIND, LLC,

*Intervenor-Respondent.*

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Emergency Application for a Writ of Injunction  
and Stay, Supplemental Information, *only*  
To The United States Court of Appeals  
For The District of Columbia Circuit

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**EMERGENCY APPLICATION FOR  
A WRIT OF INJUNCTION AND STAY,  
SUPPLEMENTAL INFORMATION, *ONLY***

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To the Honorable John G. Roberts, Jr., Chief Justice of the Supreme Court of the  
United States and Circuit Justice for the District of Columbia Circuit

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Simon V. Kinsella  
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Wainscott, NY 11975  
Tel: (631) 903-9154  
Si@oswSouthFork.Info

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**RECEIVED**

JUN 21 2023

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

## PARTIES TO PROCEEDINGS

Applicant who was the plaintiff-petitioner is Simon V. Kinsella, *pro se*.

Respondents that were defendants-respondents are U.S. Bureau of Ocean Energy Management (BOEM); and in their official capacities working for BOEM: Director Elizabeth Klein; Chief Michelle Morin, Environment Branch for Renewable Energy; Program Manager James F. Bennett, Office of Renewable Energy Programs; Environmental Studies Chief Mary Boatman, Office of Renewable Energy Programs; Economist Emma Chaiken; Economist Mark Jensen; Biologist Brian Hooker; and Jennifer Draher; and Secretary of the Interior Deb Haaland, U.S. Department of the Interior (DOI); Principal Deputy Assistant Secretary Laura Daniels-Davis, Land and Mineral Management; and Administrator Michael S. Regan, U.S. Environmental Protection Agency (EPA).

Respondent that was intervenor-defendant-respondent is South Fork Wind LLC (SFW) (formerly Deepwater Wind South Fork LLC).

Note: BOEM Director was Amanda Lefton when filing the complaint on July 20, 2022, but Ms. Lefton resigned effective January 19, 2023.

## RELATED CASES

*In re: Simon V. Kinsella*, No. 22-5317, U.S. Court of Appeals for the District of Columbia Circuit. Petition for a Writ of Mandamus seeking review of a district court ruling to transfer the case absent a hearing on substantive (civil) fraud claims or the contemplation of parties (potential witnesses) before transferring the case to an *inconvenient forum* prejudicial to the claims that had been filed in a permissible venue. On February 23, 2023, Circuit Judges Wilkins, Rao, and Walker (assigned to the case) ordered the United States and South Fork Wind, LLC enter appearances and file responses (App 7a). On May 17, 2023, a different panel (Circuit Judges Millet, Pillard, and Rao) denied an emergency motion for injunctive relief *and* the mandamus petition, affecting transfer to an *inconvenient forum* prejudicial to the claims (see App 4a-5a); then, on June 9, 2023, the panel denied a motion to stay the mandate (treated as a motion to stay the effectiveness) of the court's May 17, 2023 order. (App 3a).

*Simon V. Kinsella v. Bureau of Ocean Energy Management, et al.*, U.S. District Court for the District of Columbia, No. 22-cv-02147. Judgment upon federal defendants' motion to transfer entered November 10, 2022 (*granted*). See Order (App 6a) and Opinion (App 7-17a).

*Simon V. Kinsella v. Bureau of Ocean Energy Management, et al.*, U.S. District Court for the District of Columbia, No. 22-5316. Judgment upon Appellees' Motion to Dismiss entered February 23, 2023 (*granted*).

*Simon V. Kinsella v. Bureau of Ocean Energy Management, et al.*, U.S. District Court for the Eastern District of New York (E.D.N.Y.), 2:23-cv-02915-FB-ST. Judgment “REOPENING CASE: Ordered by Judge Frederic Block on 5/1/2023” (see ELECTRONIC ORDER, entered 05/01/2023) (Supp App 3a), contrary to D.C. Circuit order stating the “[t]he case in the Eastern District of New York, No. 2:23-cv-02915, ha[d] been administratively closed.” (App 6a).

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TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE DISTRICT OF COLUMBIA CIRCUIT:

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## INTRODUCTION

After filing an emergency motion to recall files transferred without power to the Eastern District of New York (E.D.N.Y.) by the U.S. District Court for the District of Columbia, the Court of Appeals for the D.C. Circuit confirmed that “the case was transferred prematurely and in error ... The case in the Eastern District of New York, No. 2:23-cv-02915, has been administratively closed.” The assigned panel (D.C. Circuit Judges Wilkins, Rao, and Walker) issued the order *on April 24, 2023*. See D.C. Cir., No. 22-5317, Doc. 1996148. (App 6a). The D.C. Circuit panel had yet to rule on the district court’s ruling to transfer the case from D.C. to the E.D.N.Y. (that was subject to a Petition for a Writ of Mandamus, No. 22-5317, Doc. 1976909, *amended*).

Nineteen days later (on June 13, 2023), Plaintiff-Applicant had cause to look up the “closed” case in N.Y.E.D. to find it had *not* been closed. The case was proceeding *without* his knowledge in secret and *without* authority. The district court for the E.D.N.Y. had *not* notified Plaintiff-Applicant that the case had been reopened.

Consistent with the (unlawful) procedural abuse by the U.S. District Court for D.C., and the U.S. Court of Appeals for the D.C. Circuit, the U.S. District Court for the E.D.N.Y. denied Plaintiff-Applicant of the opportunity to be heard before his motion for a preliminary injunction (filed in the U.S. District Court for D.C., 1:22-cv-02147, ECF 35) had been *denied* (see E.D.N.Y., 2:23-cv-02915-FB-ST, ECF 56, filed

05/18/2023). The E.D.N.Y. court failed to acknowledge the five claims of fraud and nine named defendants under those fraud claims in Plaintiff-Applicant's First Amended Complaint. In fact, the court failed to recognize the First Amended Complaint (filed as of right) at all.

The E.D.N.Y. district court operated without power and in secret. The court deprived Plaintiff-Applicant of his Fifth Amendment rights to due process guaranteed by the U.S. Constitution.

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### **OPINIONS BELOW**

The order and opinion of the district court for the E.D.N.Y. (Supp App 2a-7a and 8a-15a) are unreported.

### **JURISDICTION**

The jurisdiction of this Court is invoked under the All Writs Act, 28 U.S.C. § 1651. The judgment of the court of appeals was entered on June 9, 2023. (App 3a).

### **STATUTORY AND REGULATORY PROVISIONS INVOLVED**

Pertinent provisions are set out in the appendix to the petition (App 20a-22a).



## STATEMENT

According to 28 U.S.C. § 1651 and the Rules of this Court, the Applicant, Simon V. Kinsella, respectfully seeks leave to submit the following supplemental information that he discovered only late in the evening of June 13, 2023—

On **April 24, 2023**, an order (by Circuit Judges Wilkins, Rao, and Walker) stated that “[t]he docket in No. 1:22-cv-02147 reflects that the case was transferred prematurely and in error ... The case in the Eastern District of New York, No. 2:23-cv-02915, has been *administratively closed*” (emphasis added). See D.C. Cir., No. 22-5317, Doc. 1996148 (ORDER App 6a). Also, see Emergency Motion to Return Files to the District of Columbia (*id.*, Doc. 1995489).

**The D.C. Circuit** docket report reads as follows—

**April 19**— “EMERGENCY MOTION [1995489] to recall transfer of district court case” (entered by Kinsella, Simon: 04/19/2023 03:53 p.m.)

**April 24**— “CLERK’S ORDER [1996148] ... The case in the Eastern District of New York, No. 2:23-cv-02915, has been administratively closed” (before the assigned panel, Circuit Judges Wilkins, Rao, and Walker). (App 6a)

**May 16**— “EMERGENCY MOTION [1999552]” for a TRO and Preliminary Injunction (entered by Simon Kinsella: 05/16/2023 at 9:02 p.m.)

**May 17**— “PER CURIAM ORDER [1999608] filed denying motion for a temporary restraining order and preliminary injunction [1999552-2]. Denying petition for writ

of mandamus [1976909-2]” affecting transfer to EDNY (before a *new* panel, Circuit Judges Millett, Pillard, and Rao, entered: 05/17/2023 at 12:10 p.m.) (App 4a-5a)

**June 1**— “MOTION [2001691] to stay mandate” (entered by Simon Kinsella).

**June 9**— “PER CURIAM ORDER [2002892] filed denying petitioner’s motion to stay the mandate [2001691-2], which the court construes as a motion to stay the effectiveness of the court’s May 17, 2023, order” (before the *new* panel, Circuit Judges Millett, Pillard, and Rao, entered: 06/09/2023). (App 3a)

**June 12**— “NOTICE [2003210]” of Emergency Application for a Writ of Injunction and Stay filed in the U.S. Supreme Court (entered by Simon Kinsella: 06/12/2023)

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Late in the evening of June 13, 2023, Plaintiff-Applicant received an email containing three motions to appear pro hac vice in a case before Judge Frederic Block in the district court for the E.D.N.Y. (2:23-cv-02915) that he was led to believe had been closed on **April 24, 2023** (see D.C. Cir. ORDER App 6a). However, the E.D.N.Y. court did *not* close the case but reassigned it to Judge Frederic Block and Magistrate Judge Steven Tiscione the following day, **on April 25**. The Plaintiff-Applicant had *not* been informed that the E.D.N.Y. court had been issuing orders **since April 25**. The case “transferred prematurely and in error” and “administratively closed” (App 6a) **had not been closed and has been operating in secret**.

The E.D.N.Y. civil docket sheet reads as follows (Supp App 2a-7a)—

**April 19**— “Incomplete ACO Case Termination/Statistical/Non Reportable Closing. (DC) (Entered: 04/20/2023)” (Supp App 2a)

**April 19**— “District of Columbia Case number 1:22-cv-02147, Kinsella v. Bureau Of Ocean Energy Management et al, was transferred to The Eastern District of New York in error. E.D.N.Y. case number 23-cv-02915-GRB-SIL has been administratively closed. (AC) (Entered: 04/24/2023)” (Supp App 2a)

**April 25**— the case was reassigned to Judge Frederic Block and Magistrate Judge Steven Tiscione. (See ELECTRONIC ORDER Entered: 04/25/2023)(Supp App 2a-3a)

**May 1**— the case was reopened by order of Judge Frederic Block. “Modified on 5/18/2023 TO REFLECT THAT THERE ARE NO LONGER ANY PENDING APPEALS IN THE D.C. CIRCUIT. (MI).” (See ELECTRONIC ORDER Entered: 05/01/2023) (Supp App 3a)

**May 18**— “MEMORANDUM AND ORDER: Plaintiffs motion 35 for a preliminary injunction is DENIED.” (See ECF No. 56, ELECTRONIC ORDER Entered: 05/18/2023) (CIVIL DOCKET SHEET Supp App 3a, MEMORANDUM AND ORDER Supp App 3a)

**May 18**— “NOTICE of Appearance by Vincent Lipari on behalf of Bureau of Ocean Energy Management, Deb Haaland, Michael S. Regan (aty to be noticed) (Lipari, Vincent) (Entered: 05/18/2023)” (see ECF No. 57). (Supp App 3a)

**June 12**— “SCHEDULING ORDER: An initial conference will be held at 10:30 a.m. on July 6, 2023, before the undersigned by phone.” (See ECF No. 58, ELECTRONIC ORDER Entered: 06/12/2023). (Supp App 3a-4a)

**June 13** (7:42 p.m.)— “Motion[s] to Appear Pro Hac Vice” by Schneider, VanBelleghem, and O’Connor for South Fork Wind (Supp App 5a-6a). Plaintiff-Applicant had received motions via email directly from opposing counsel, *not* from the E.D.N.Y. district court. It was the first time that Plaintiff-Applicant had been notified that another court was hearing his case.

**June 14**— ORDERS granting Motions to Appear Pro Hac Vice (Supp App 6a-7a)

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As Plaintiff-Applicant in the case, I had *not* received *any* notification that the case had been reopened or that a parallel case in the E.D.N.Y. had been hearing and deciding matters in a case that I was led to believe (by the U.S. Court of Appeals for the District of Columbia) had been closed.

D.C. Circuit Rules 41(3) state that—

“No mandate will issue in connection with an order granting or denying a writ of mandamus or other special writ, but the order or judgment granting or denying the relief sought will become effective automatically 21 days after issuance in the absence of an order or other special direction of this court to the contrary.”

The D.C. Circuit issued the order denying the petition for a writ of mandamus affecting transfer to the EDNY on May 17, 2023 (*see* No. 22-5317, Doc. 1999608). Twenty-one days after that order was issued is June 7, 2023. However, the E.D.N.Y.

court had issued three orders *before* June 7— (1) reassigning the case on April 25 (Supp App 2a-3a), (2) reopening the case on May 1 (Supp App 3a); and (3) denying the motion for a preliminary injunction on May 18 (Supp App 3a). The (unlawful) order denying preliminary injunction was *not* without prejudice.

The caption on the district court order denying preliminary injunction *excludes* (eight) defendants (BOEM officials) named in the First Amended Complaint’s (five) claims of fraud. The First Amended Complaint was filed as of right (on November 2, 2023), accepted by the District Court for the District of Columbia, and recognized by the D.C. Circuit. The District Court for D.C.’s Minute Order reads— “The Court GRANTS Plaintiff’s Motion to Amend/Correct the Complaint [34], which Plaintiff may do as a matter of course at this stage in the proceedings. See Fed. R. Civ. P. 15(a)(1)(B).” *See* D.D.C., 1:22-cv-02147, entered 11/10/2022). However, the E.D.N.Y. court ignored the First Amended Complaint as if it, the defendants, and the fraud claims do not exist. Consistent with the district court for D.C.’s denial of Plaintiff-Applicant’s Fifth Amendment rights to a fair hearing and due process of law, the E.D.N.Y. court also violated Plaintiff-Applicant’s constitutional rights to due process.

The district court order denying preliminary injunction (falsely) states that “the Project is located in Suffolk County, New York [where] another case ***challenging the same Project*** is pending ... [Mr.] Kinsella’s challenge ***to the Project is largely the same*** [emphasis added]” (Supp App 10a). Here, the U.S. District Court for the N.Y.E.D. fundamentally mischaracterizes the lawsuit. Neither the Complaint (filed

July 20, 2022) nor the First Amended Complaint (filed November 2, 2022) challenges *the Project*. The lawsuit challenges *the federal review* of the Project (see Reply to Federal Defendants' Opposition to Mandamus Petition, No. 22-5317, Doc. 1994449). Neither complaint names South Fork Wind LLC (SFW) as a defendant. SFW intervened on November 7, 2022 (see D.D.C., 1:22-cv-02147, ECF 43) *after* Plaintiff-Applicant filed his First Amended Complaint on November 2, 2022 (*id.*, ECF 34-2).

The E.D.N.Y. district court order denying preliminary injunction failed to acknowledge the District of Columbia's recognized expertise in Freedom of Information Act (FOIA) complaints under 5 U.S.C. § 552(a)(4)(B).

Counsel representing federal agency defendants, Mr. Vincent Lipari, knew the E.D.N.Y. district court case had been reopened as early as May 18, 2023, when he filed a notice of appearance (Supp App 3a), nearly a month *before* Plaintiff-Applicant had learned the E.D.N.Y. court was actively issuing orders.

The Emergency Application for a Writ of Injunction, Supplemental Information has been signed before a notary, serving as an affidavit.

It is my intention to file a Petition for a Writ of Certiorari concerning the various courts' procedural abuse in blatant violation of 28 U.S.C. § 1404 in aid of avoiding proper judicial review by transferring the case *without* considering five claims of (civil) fraud or the convenience of the (nine) parties named in the fraud claims and potential witnesses (acknowledged by the D.C. Circuit) in a (civil) fraud trial where the seventeen causes of action occurred within an easily commutable distance from

the U.S. Court of Appeals for the District of Columbia courthouse. The courthouse in the E.D.N.Y. is *inconveniently* three hundred miles away.

The U.S. District Court for the E.D.N.Y., like the District Court for D.C. and the Court of Appeals for the D.C. Circuit, denied Applicant his Fifth Amendment rights to due process guaranteed by the U.S. Constitution.

### CONCLUSION

For the above reasons, I humbly request that the U.S. Supreme Court accept and consider this supplemental information.

Respectfully submitted this 15th day of June 2023,

  
\_\_\_\_\_  
Simon W. Kinsella  
Applicant *pro se*  
P.O. Box 792,  
Wainscott, NY 11975  
Tel: (631) 903-915  
Si@oswSouthFork.Info

STATE OF NEW YORK  
COUNTY OF SUFFOLK

I, Simon V. Kinsella, Applicant *pro se*, being duly sworn, say under penalty of perjury:

I am a resident of Wainscott in the Town of East Hampton, N.Y. The contents of my Emergency Application for a Writ of Injunction and Stay, Supplemental Information, dated June 15, 2023, are true to the best of my knowledge, information, and belief.

Sworn to before me this  
15th day of June 2023



David Fink, Notary Public

DAVID FINK  
Notary Public, State of New York  
No. 4526132  
Qualified in New York County  
Commission Expires February 28, 2024



Simon V. Kinsella, Petitioner *pro se*  
P.O. Box 792, Wainscott, NY 11975  
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**Supplemental Appendix A-B: U.S. District Court Order & Opinion**

For the Eastern District of New York (EDNY)

*Kinsella v. Bureau Of Ocean Energy Management et al.*

Case: 2:23-cv-02915-FB-ST

**Supplemental Appendix A:**

U.S. District Court for Eastern District of New York (Central Islip)

CIVIL DOCKET FOR CASE #: 2:23-cv-02915-FB-ST

(from April 19 through June 14, 2023) ..... Supp App 2a-7a

**Supplemental Appendix B:**

**MEMORANDUM AND ORDER:**

Denying Plaintiff's motion for a preliminary injunction.

Ordered by Judge Frederic Block on 5/18/2023 ..... Supp App 8a-15a

U.S. District Court  
 Eastern District of New York (Central Islip)  
 CIVIL DOCKET FOR CASE #: 2:23-cv-02915-FB-ST

Kinsella v. Bureau Of Ocean Energy Management et al Date Filed: 04/19/2023

Assigned to: Judge Frederic Block

Jury Demand: None

Referred to: Magistrate Judge Steven Tiscione

Nature of Suit: 895

Case in other court: District of Columbia,

Freedom of Information Act

1:22-cv-02147

Jurisdiction: U.S.

Cause: 42:4321 Review of Agency Action-Environment Government Defendant

04/19/2023	Incomplete ACO Case Termination/Statistical/Non Reportable Closing. (DC) (Entered: 04/20/2023)
04/19/2023	District of Columbia Case number 1:22-cv-02147, Kinsella v. Bureau Of Ocean Energy Management et al, was transferred to The Eastern District of New York in error. E.D.N.Y. case number 23-cv-02915-GRB-SIL has been administratively closed. (AC) (Entered: 04/24/2023)
04/25/2023	ORDER REASSIGNING CASE. Case reassigned to Judge Frederic Block and Magistrate Judge Steven Tiscione (as related to 22-cv-1305) for all further proceedings. Judge Gary R.

		<p>Brown, Magistrate Judge Steven I. Locke no longer assigned to case Please download and review the Individual Practices of the assigned Judges, located on our website. Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. Ordered by Chief Judge Margo K. Brodie on 4/25/2023. (KD) (Entered: 04/25/2023)</p>
05/01/2023		<p>ELECTRONIC ORDER REOPENING CASE: Ordered by Judge Frederic Block on 5/1/2023. (MI) Modified on 5/18/2023 TO REFLECT THAT THERE ARE NO LONGER ANY PENDING APPEALS IN THE D.C. CIRCUIT. (MI). (Entered: 05/01/2023)</p>
05/18/2023	56	<p>MEMORANDUM AND ORDER: Plaintiffs motion 35 for a preliminary injunction is DENIED. Ordered by Judge Frederic Block on 5/18/2023. (MI) (Entered: 05/18/2023)</p>
05/18/2023	57	<p>NOTICE of Appearance by Vincent Lipari on behalf of Bureau of Ocean Energy Management, Deb Haaland, Michael S. Regan (aty to be noticed) (Lipari, Vincent) (Entered: 05/18/2023)</p>
06/12/2023	58	<p>SCHEDULING ORDER: An initial conference will be held at 10:30 a.m. on July 6, 2023 before the undersigned by phone. Counsel for all parties must participate and shall connect to the conference through dial-in number 888-557-8511 with access code 3152145. The attached Discovery Plan Worksheet is to be</p>

		<p>completed by counsel and electronically filed with the Court by July 3rd.</p> <p><b>THE PARTIES ARE REMINDED that audio or video recording of proceedings by any party other than the Court, is strictly prohibited by Local Civil Rule 1.8. Violation of this rule may result in sanctions, including removal of court issued media credentials, restricted entry to future hearings, denial of entry to future hearings, or any other sanctions deemed appropriate by the Court.</b></p> <p>So Ordered by Magistrate Judge Steven Tiscione on 6/12/2023. (LV) (Entered: 06/12/2023)</p>
06/13/2023	59	<p>MOTION to Appear Pro Hac Vice Filing fee \$ 150, receipt number ANYEDC-16793536 by South Fork Wind, LLC.</p> <p>(Attachments: # 1 Declaration of Janice M. Schneider in Support of Motion to Admit Counsel Pro Hac Vice, # 2 Exhibit A - Certificates of Good Standing, # 3 Proposed Order Granting Motion to Admit Counsel Pro Hac Vice) (Schneider, Janice)</p> <p>(Entered: 06/13/2023)</p>
06/13/2023	60	<p>MOTION to Appear Pro Hac Vice Filing fee \$ 150, receipt number ANYEDC-16793569 by South Fork Wind, LLC.</p>

		<p>(Attachments: # 1 Declaration of Stacey L. VanBelleghem in Support of Motion to Admit Counsel Pro Hac Vice, # 2 Exhibit A - Certificates of Good Standing, # 3 Proposed Order Granting Motion to Admit Counsel Pro Hac Vice) (VanBelleghem, Stacey)</p> <p>(Entered: 06/13/2023)</p>
06/13/2023	61	<p>MOTION to Appear Pro Hac Vice Filing fee \$ 150, receipt number ANYEDC-16793592 by South Fork Wind, LLC.</p> <p>(Attachments: # 1 Declaration of Devin M. O'Connor in Support of Motion to Admit Counsel Pro Hac Vice, # 2 Exhibit A - Certificates of Good Standing, # 3 Proposed Order Granting Motion to Admit Counsel Pro Hac Vice) (O'Connor, Devin)</p> <p>(Entered: 06/13/2023)</p>
06/14/2023		<p>ORDER granting 59 Motion for Leave to Appear Pro Hac Vice. Having reviewed the Pro Hac Vice application 59 submitted by Janice M. Schneider for Defendant-Intervenor South Forth Wind, LLC and found it to be in compliance with the local rules concerning attorney admissions, the application is approved. If not already done, the attorney shall register for ECF which is available online at the NYED's homepage. Once registered, the attorney shall file a notice of appearance and ensure that he/she receives electronic notifications of activity in this case. The</p>

	<p>attorney shall ensure that the \$150 admission fee is submitted or has been submitted to the Clerk's Office. So Ordered by Magistrate Judge Steven Tiscione on 6/14/2023. (LV) (Entered: 06/14/2023)</p>
06/14/2023	<p>ORDER granting 60 Motion for Leave to Appear Pro Hac Vice. Having reviewed the Pro Hac Vice application 60 submitted by Stacey L. VanBellegem for Defendant-Intervenor South Fork Wind, LLC and found it to be in compliance with the local rules concerning attorney admissions, the application is approved. If not already done, the attorney shall register for ECF which is available online at the NYED's homepage. Once registered, the attorney shall file a notice of appearance and ensure that he/she receives electronic notifications of activity in this case. The attorney shall ensure that the \$150 admission fee is submitted or has been submitted to the Clerk's Office. So Ordered by Magistrate Judge Steven Tiscione on 6/14/2023. (LV) (Entered: 06/14/2023)</p>
06/14/2023	<p>ORDER granting 61 Motion for Leave to Appear Pro Hac Vice. Having reviewed the Pro Hac Vice application 61 submitted by Devin M. O'connor for Defendant-Intervenor South Forth Wind, LLC and found it to be in compliance with the local rules</p>

	<p>concerning attorney admissions, the application is approved. If not already done, the attorney shall register for ECF which is available online at the NYED's homepage. Once registered, the attorney shall file a notice of appearance and ensure that she receives electronic notifications of activity in this case. The attorney shall ensure that the \$150 admission fee is submitted or has been submitted to the Clerk's Office. So Ordered by Magistrate Judge Steven Tiscione on 6/14/2023. (LV) (Entered: 06/14/2023)</p>
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x

SIMON V. KINSELLA,  
Plaintiff,

-against

BUREAU OF OCEAN ENERGY  
MANAGEMENT; DEB HAALAND,  
Secretary of the Interior, U.S.  
Department of the Interior;  
MICHAEL S. REGAN, Administrator,  
U.S. Environmental Protection Agency,  
Defendants.

-----x

*Appearances:*

*For the Pro Se Plaintiff:*  
SIMON V. KINSELLA  
P.O. Box 792  
Wainscott, N.Y. 11975

**MEMORANDUM AND ORDER**

Case No. 23-CV-02915-FB-ST

*For Defendants:*

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*For Intervenor Defendant:*

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**BLOCK, Senior District Judge:**

Pro Se Plaintiff Simon Kinsella (“Kinsella”), a resident of the Wainscott hamlet of the Town of East Hampton, New York, is seeking a preliminary injunction to halt construction of the South Fork Wind Farm and South Fork Export Cable Project (the “Project”). Kinsella claims that as a result of the Project, which is currently under construction, irreparable harm will occur (i) to the drinking water near the onshore portion of the Project and (ii) to the Atlantic cod population near the offshore portion of the Project. For the reasons that follow, Kinsella’s motion is denied.

**I. FACTS AND PROCEDURAL HISTORY**

Kinsella’s action challenges the approval of the Project granted by the Bureau of Ocean Energy Management (“BOEM”), which is part of the United States Department of the Interior (“DOI”). Specifically, Kinsella argues that BOEM violated the Administrative Procedure Act (the “APA”) by failing to adequately consider the Project’s potential harm to the area’s drinking water and the offshore Atlantic cod population, as well as the Project’s negative economic impact. Kinsella also argues that the bidding process for the Project was deficient, that BOEM violated the National Environmental Policy Act (“NEPA”), the Outer Continental Shelf Lands Act (“OCSLA”), the Coastal Zone Management Act (“CZMA”), Executive Order 12898, and the Due Process Clause of the Fourteenth Amendment.

On November 2, 2022, Kinsella moved in the U.S. District Court for the District of Columbia (D.D.C.) for a temporary restraining order, which was denied one week

later. Subsequently, the D.D.C. granted Defendants' motion to transfer this case, along with Kinsella's pending motion for a preliminary injunction, to this Court since the Project is located in Suffolk County, New York and another case challenging the same Project is pending before the Court. See *Mahoney v. U.S. Dep't of the Interior*, No. 22-cv-01305, 2022 WL 1093199 (E.D.N.Y. 2022). Kinsella's challenge to the Project is largely the same as that brought by the *Mahoney* plaintiffs, though he adds to their argument by bringing claims under CZMA, the Fourteenth Amendment and an executive order, in addition to the APA, NEPA, and OCSLA. He also does not include the U.S. Army Corp of Engineers as defendants. However, the bulk of the harm claimed by Kinsella is largely the same as that claimed by the *Mahoney* plaintiffs, with the additions of the allegations of harm to the offshore cod population and the potential economic harm caused by the Project. Because these harms underpin all of Kinsella's numerous claims, the Court will address the harms claimed, rather than each individual cause of action, in explaining why Kinsella is not entitled to a preliminary injunction.

The Project—the same one challenged by the *Mahoney* plaintiffs—involves construction of a wind farm located 35 miles east of Montauk Point, Long Island, and the onshore cables that export the energy produced by the windmills to the onshore electric grid in East Hampton. The cables will be contained in underground trenches that will run through Wainscott, where portions of the groundwater are contaminated by perfluoroalkyl and polyfluoroalkyl substances (“PFAS”). The offshore portion of

the Project will involve seafloor construction in an area apparently known for Atlantic cod spawning.

As the D.D.C. pointed out in its November 10, 2022 memorandum and order transferring the venue of this action, the Project's "approval process included myriad opportunities for input from other agencies and stakeholders." Several federal, state, and local agencies participated in the process of preparing the Record of Decision, which approved the Project, and BOEM conducted a public comment period, which included three public hearings, and the review of nearly 400 submittals from the public, agencies, and other interested parties.

Ultimately, the permits to conduct the offshore portion of the Project were issued by Defendants. Permits for the onshore portion of the Project were issued by the New York Public Service Commission ("NYPSC") after years of administrative proceedings which considered the issue of PFAS pollution exacerbation, among other things. An appeal of this approval was denied in New York State court. Separately, residents of Wainscott brought an action in New York State court challenging an easement granted for the trenching in question, which was also denied. In March 2022, the *Mahoney* plaintiffs petitioned this Court for a preliminary injunction to block construction of the onshore portion of the Project, which they claimed would disrupt PFAS in the ground and irreparably harm their already contaminated groundwater quality. The Court denied their request the following month. Kinsella has also brought actions in state court related to the Project.

Now, Kinsella seeks the relief from this Court that he and his neighbors have repeatedly sought and failed to obtain—a bar to the Project’s construction. However, Kinsella, like his unsuccessful neighbors, has failed to demonstrate that irreparable harm will result in the absence of a preliminary injunction. Therefore, his motion for the extraordinary relief of a preliminary injunction is denied.

## II. PRELIMINARY INJUNCTION

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). If an injunction “disrupt[s] the status quo, a party seeking one must meet a heightened legal standard by showing ‘a clear or substantial likelihood of success on the merits.’” *N. Am. Soccer League, LLC v. U.S. Soccer Fed’n, Inc.*, 883 F.3d 32, 37 (2d Cir. 2018) (quoting *N.Y. Civil Liberties Union v. N.Y.C. Transit Auth.*, 684 F.3d 286, 294 (2nd Cir. 2012)).

“Perhaps the single most important prerequisite for the issuance of a preliminary injunction is a demonstration that if it is not granted the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered.” *Bell & Howell: Mamiya Co. v. Masel Supply Co. Corp.*, 719 F.2d 42, 45 (2d Cir. 1983). To establish irreparable harm, a movant “must demonstrate an injury that is neither remote nor speculative, but actual and imminent and that cannot be remedied by an

award of monetary damages.” *Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328, 332 (2d Cir. 1995) (internal quotation omitted).

In addition, because Kinsella’s claims concern an administrative agency decision, the Court reviews his claims under the standard provided by the APA. Courts shall set aside agency action when it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.” 5 U.S.C. § 706(2)(A). Agency decision-making is arbitrary and capricious when the agency bases its decision on “factors which Congress has not intended it to consider,” when the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency,” or its reasoning “is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Alzokari v. Pompeo*, 973 F.3d 65, 70 (2d Cir. 2020) (internal quotation marks and citation omitted).

### III. ANALYSIS

First, Kinsella argues that the digging for these trenches will disrupt the PFAS in the ground, exacerbating existing groundwater pollution in the area. Though the area and manner in which Kinsella argues that PFAS will be disrupted differs from that of the *Mahoney* plaintiffs, the harm claimed is the same. The same reasoning that the Court applied in denying the *Mahoney* plaintiffs’ request for a preliminary injunction applies here. Kinsella’s argument likewise fails on the first prong of the preliminary injunction analysis: irreparable harm.

Kinsella need not show that irreparable harm is a guaranteed outcome, but he must show that it is likely. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). “Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court’s] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Id.* Kinsella has not met his burden of demonstrating a likelihood of harm. Aside from the fact that New York State agencies issued the permits for the onshore portion of the Project, not BOEM, and enjoined its authorization of the Project would not halt the onshore portion of the Project, the NYPSC has already found that the Project as proposed will not exacerbate existing PFAS, in part because of mitigation measures included in the Project’s plan. And, even if the Project did ultimately exacerbate PFAS contamination, PFAS contamination can be remediated post-facto. See *Mahoney* 2022 WL 1093199, at \*2.

Next, Kinsella argues that the seafloor construction undertaken to build the offshore portion of the Project will cause irreparable harm to the cod population, which will in turn drive up the cost of cod. Not only is this argument speculative, far from meeting the standard of a likelihood of harm, but it points to a financial harm generally outside the purview of injunctive relief. It is well-settled that “[m]onetary loss alone will generally not amount to irreparable harm.” *Borey v. National Union Fire Ins. Co. of Pittsburgh, Pennsylvania*, 934 F.2d 30, 34 (2d Cir. 1991). Kinsella’s unsubstantiated argument about the Project’s potential effect on the price of cod and

the harm he may suffer as a result is exactly the sort of speculative argument that Borey forecloses. The same is true of Kinsella's final harm claimed: a potential increase in electricity prices in the area resulting from the Project's expense. Kinsella argues that the Project is based on "one-sided economic[s]" and will cause an increase in electricity prices in the area, which could be disproportionately borne by low-income residents. This argument likewise fails at the preliminary injunction stage for its failure to show a likelihood of irreparable harm and its singular basis on monetary harm that could be remedied with standard damages. *See id.*

Finally, as with *Mahoney*, Kinsella waited until several bites at the apple were taken in various judicial and administrative forums, with significant passage of time, before filing this action. This time lapse "undercuts the sense of urgency that ordinarily accompanies a motion for preliminary relief and suggests that there is, in fact, no irreparable injury." *Tough Traveler, Ltd. v. Outbound Prod.*, 60 F.3d 964, 968 (2d Cir. 1995) (quoting *Citibank, N.A. v. Citytrust*, 756 F.2d 273, 277 (2d Cir. 1985)).

### CONCLUSION

Plaintiff's motion for a preliminary injunction is **DENIED**.

**SO ORDERED.**

/S/ Frederic Block  
FREDERIC BLOCK  
Senior United States District Judge

Brooklyn, New York  
May 18, 2023

June 15, 2023

Clerk  
Supreme Court of the United States  
1 First Street, NE  
Washington, DC 20543

**Re: Simon V. Kinsella, Applicant v. U.S. Bureau of Ocean Energy Management, *et al.*, Respondents and South Fork Wind, LLC, Intervenor-Respondent.**

Dear Sir or Madam:

As required by Supreme Court Rule 33.1(h), I certify that the Emergency Application for a Writ of Injunction, Supplemental Information referenced above contains 1,869 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Sincerely,



Simon v. Kinsella  
Petitioner-Applicant *pro se*  
P.O. Box 792, Wainscott, NY 11975  
Tel: (631) 903-915 | [Si@oswSouthFork.Info](mailto:Si@oswSouthFork.Info)



June 15, 2023

Clerk  
Supreme Court of the United States  
1 First Street, NE  
Washington, DC 20543

**Re: Simon V. Kinsella, Applicant v. U.S. Bureau of Ocean Energy Management, et al., Respondents and South Fork Wind, LLC, Intervenor-Respondent.**

Dear Sir or Madam:

I hereby certify that on June 15, 2023, I caused service to be made pursuant to Rule 29 on the following counsel for the Respondents:

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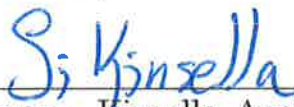
Service was affected by depositing three copies of an Emergency Application for a Writ of Injunction, Supplemental Information at an official United States Postal Services Post Office and transmitting digital copies via electronic mail.

Sworn before me this  
15th day of June 2023,

  
\_\_\_\_\_  
David Fink, Notary Public

DAVID FINK  
Notary Public, State of New York  
No. 4526132  
Qualified in New York County  
Commission Expires February 28, 2024

Sincerely,

  
\_\_\_\_\_  
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