APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1642

LEONARD W. HOUSTON,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. Terrence W. Boyle, District Judge. (7:23-cv-01202-BO-RN)

Submitted: August 22, 2024 Decided: November 20, 2024

Before WILKINSON, WYNN, and RICHARDSON, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Leonard W. Houston, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Leonard W. Houston seeks to appeal the district court's text order denying his motion for certification under 28 U.S.C. § 1292(b), which the court entered in Houston's pending action under the Camp Lejeune Justice Act of 2022, Pub. L. No. 117-168, § 804, 136 Stat. 1802, 1802-04 (2022). This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291, and certain interlocutory and collateral orders, 28 U.S.C. § 1292; Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949). The order Houston seeks to appeal is neither a final order nor an appealable interlocutory or collateral order. *See, e.g.*, *Agudas Chasidei Chabad of U.S. v. Russian Fed'n*, 19 F.4th 472, 476 (D.C. Cir. 2021) ("Section 1292(b) does not contemplate appellate review of a district court's threshold decision about whether to certify a question for appeal."); *Brown v. Eli Lilly & Co.*, 654 F.3d 347, 353 (2d Cir. 2011) ("[A]n [o]rder denying § 1292(b) certification is not appealable." (internal quotation marks omitted)).

Accordingly, we dismiss the appeal for lack of jurisdiction and deny Houston's motion for judicial notice.* We dispense with oral argument because the facts and legal

* We note that "[i]n this circuit, a petition for a writ of mandamus is the proper way to challenge the denial of a jury trial." *In re Lockheed Martin Corp.*, 503 F.3d 351, 353 (4th Cir. 2007). For that reason, if such a petition would be fruitful, we might be inclined to construe Houston's notice of appeal as a petition for a writ of mandamus, given Houston's pro se status. *E.g.*, *Castro v. United States*, 540 U.S. 375, 381 (2003) ("Federal courts sometimes will ignore the legal label that a *pro se* litigant attaches to a motion and recharacterize the motion in order to place it within a different legal category. They may do so[, for example,] in order to avoid an unnecessary dismissal[.]" (citations omitted)); *Simmons v. Whitaker*, 106 F.4th 379, 387 (4th Cir. 2024) ("*[P]ro se* documents are to be liberally construed."); *Wall v. Rasnick*, 42 F.4th 214, 218 (4th Cir. 2022) ("In practice, this liberal construction allows courts to recognize claims despite various formal deficiencies, (Continued)

contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

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such as incorrect labels or lack of cited legal authority."). However, this Court recently rejected a petition of mandamus in a highly similar case. *See In re McBrine*, No. 24-1542 (4th Cir. Aug. 23, 2024) (unpublished order) (rejecting counseled petition for writ of mandamus seeking to overturn the district court's order striking a demand for a jury trial in another case brought under the Camp Lejeune Justice Act, after the district court denied a motion for certification of an interlocutory appeal). So we decline to exercise our discretion to construe Houston's filing as a petition for a writ of mandamus.

FILED: November 20, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1642
(7:23-cv-01202-BO-RN)

LEONARD W. HOUSTON

Plaintiff - Appellant

v.

UNITED STATES OF AMERICA

Defendant - Appellee

JUDGMENT

In accordance with the decision of this court, this appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

FILED: January 28, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1642
(7:23-cv-01202-BO-RN)

LEONARD W. HOUSTON

Plaintiff - Appellant

v.

UNITED STATES OF AMERICA

Defendant - Appellee

ORDER

The court denies the petition for rehearing and rehearing en banc[1]. No judge requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wilkinson, Judge Wynn, and Judge Richardson.

For the Court

/s/ Nwamaka Anowi, Clerk

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[1] Chief Judge Diaz did not participate in consideration of the petition for rehearing en banc.

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA
(Southern Division)

LEONARD W. HOUSTON	)	
	)	
Plaintiff,	)	Docket No. 7:23-cv-01202-BO-RN
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
Defendant.	)	

NOTICE OF APPEAL TO UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

NOTICE is hereby given that **LEONARD W. HOUSTON**, hereby appeals to the United States Court of Appeals for the Fourth Circuit from the **TEXT ORDER** of the U.S. District Court for the Eastern District of North Carolina (South Division) that denied Plaintiff's Motion to Certified For Appeal the Order Granting Defendants; Motion #14, filed on April 12, 2024, to Strike the Demand for Jury Trial pursuant to the Order entered at docket entry #204, in the Camp Lejeune Water Litigation master docket, **7:23-cv-897**. Annexed copy of said order inscribed on this Court's Docket Sheet entitled, "**TEXT OREDER**" date filed electronically on June 20, 2024, in the entitled Case #: 7:23-cv-01202-**BO-RN**, marked as **Exhibit A.**

Dated: **July1, 2024**

LEONARD W. HOUSTON, *po-se*
Plaintiff
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Middletown, N'Y 10940-6867
(845) 343-8923
E-mail: lenny.houston@yahoo.com

TO:

ALLISON M. O'Leary, Esq., *Trial Attorney*
ELEIZABETH K. PLATT, Esq., *Trial Attorney*
PATRICK J. RYAN, Esq., *Trial Attorney*
United States of America, *Defendant*
UNITED TATES DEPARTMENT OF JUSTICE
P.O. Box 340, Ben Franklin Station
Washington, D.C. 20044

09/29/2023	10	Notice of Appearance filed by Haroon Anwar on behalf of United States of America. (Anwar, Haroon) (Entered: 09/29/2023)
10/05/2023	11	MOTION for Leave to File Supplemental Complaint filed by Leonard W. Houston. (Attachments: # 1 Exhibit A - Copy of 9 Order and Supplemental Complaint, # 2 Exhibit B - Letter from Plaintiff to Government Attorneys, # 3 Additional Attachments in Support, # 4 Envelope) (Sellers, N.) (Entered: 10/05/2023)
10/11/2023		Motion Submitted to District Judge Terrence W. Boyle regarding 11 MOTION for Leave to File. (Sellers, N.) (Entered: 10/11/2023)
11/09/2023	12	TEXT ORDER denying 11 Motion for Leave to File. The Court has reviewed plaintiff's motion, and plaintiff fails to show good cause for leave to file his motion. Thus, in accordance with Case Management Order No. 2, section VII, of the Master Docket, 7:23-cv-897, plaintiff's motion is denied. Signed by District Judge Terrence W. Boyle on 11/9/2023. *(Pro se party has consented to receiving electronic service of all motions, notices, orders, and documents in civil cases in the Eastern District of North Carolina.)* (Sellers, N.) (Entered: 11/09/2023)
12/27/2023	13	**SHORT-FORM COMPLAINT** against United States of America, filed by Leonard W. Houston. (Attachments: # 1 Exhibit 1 - Claim for Injury or Death Document, # 2 Certificate of Service with Green Card Information, # 3 Envelope) (Carter, Alexus) (Entered: 12/27/2023)
04/12/2024	14	MOTION to Certify For Appeal the Order Granting Defendant's Motion to Strike the Demand for Jury Trial filed by Leonard W. Houston. (Attachments: # 1 Copy of Short-Form Complaint, # 2 Copy of Order at DE 133 in 7:23-cv-897, # 3 Envelope) (Sellers, N.) (Entered: 04/12/2024)
05/06/2024		Motion Submitted to District Judge Terrence W. Boyle regarding 14 MOTION to Certify For Appeal the Order Granting Defendant's Motion to Strike the Demand for Jury Trial. (Sellers, N.) (Entered: 05/06/2024)
06/20/2024		TEXT ORDER denying 14 Motion to Certify For Appeal the Order Granting Defendant's Motion to Strike the Demand for Jury Trial pursuant to the Order entered at docket entry #204 in the Camp Lejeune Water Litigation master docket, 7:23-cv-897. Signed by District Judge Terrence W. Boyle on 6/20/2024. *(Pro se party has consented to receiving electronic service of all motions, notices, orders, and documents in civil cases in the Eastern District of North Carolina.)* (Sellers, N.) (Entered: 06/20/2024)

PACER Service Center			
Transaction Receipt			
07/07/2024 13:45:23			
PACER Login:	Manheim7	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	7:23-cv-01202-BO-RN
Billable Pages:	3	**Cost:**	0.30

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:23-cv-01202-BO

IN RE: CAMP LEJEUNE WATER LITIGATION Case No. 7:.23-cv-897

LEONARD W. HOUSTON,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

PLAINTIFF'S MOTION TO CERTIFY FOR APPEAL THE ORDER GRANTING DEFENDANT'S MOTION TO STRIKE THE DEMAND FOR JURY TRIAL

Plaintiff, Leonard W. Houston, *pro*-se, submit the entitled motion to this Court to certify for immediate appellate review, pursuant to 28 U.S.C. § 1292(b), its entered ORDER {D.E.# 133], dated February 6, 2024, which therein granted Defendant, United States of America's motion entitled, **"MOTION TO STRIKE THE DEMAND FOR JURY TRIAL"** {D.E.#51), and such other and different relief stated therein.

As pursuant to federal statute, 28 U.S.C. § 1292(b), which provides that interlocutory order involving, to wit:

> "a controlling question of law as to which there is substantial, ground for difference of opinion,"

the same as in this plaintiff's *pro-se* case, based upon his statutory filing of the document entitled, **"SHORT-FORM COMPLAINT"** (D.E.#1) [**RECEIVED**-Dec. 27, 2023], can be immediately appealed if doing so, "may materially advance the ultimate termination of the litigation," of his case.

Annex copy of Receipted/Filed Document by US District Court (EDNC)

Therefore, the aforesaid reasons stated above, an immediate appeal of this Court's **ORDER,** denying a "Demand For Jury Trail, pursuant to Rule 38 of the Federal Rules of Civil Procedure and the Camp Lejeune Justic Act of 2022 ("CLJA"), section 840, is warranted under the criteria outline in said federal statute [§ 1292 (b)].

Dated: **April 10, 2024**

Respectfully submitted,

LEONARD W. HOUSTON, *pro-se*
Plaintiff
148 Deer Court Drive, Bldg. 4
Middletown, NY 10940-6867
845-343-8923

TO:

ALLISON M. O'Leary, Esq., *Trial Attorney*
ELEIZABETH K. PLATT, Esq., *Trial Attorney*
PATRICK J. RYAN, Esq., *Trial Attorney*
United States of America, *Defendant*
UNITED STATES DEPARTMENT OF JUSTICE
P.O. Box 340, Ben Franklin Station
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APPENDIX D

I

118TH CONGRESS
2D SESSION

H. R. 8545

To amend the Camp Lejeune Justice Act of 2022 to make technical corrections.

IN THE HOUSE OF REPRESENTATIVES

MAY 23, 2024

Mr. MURPHY (for himself, Ms. ROSS, Ms. MANNING, Mr. DAVIS of North Carolina, Mr. JACKSON of North Carolina, Mr. ROUZER, Mr. HUDSON, Ms. LEE of Florida, Mr. MCHENRY, Mr. EDWARDS, and Mr. HUNT) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend the Camp Lejeune Justice Act of 2022 to make technical corrections.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Camp Lejeune Justice Act of 2024".

SEC. 2. TECHNICAL CORRECTIONS TO THE CAMP LEJEUNE JUSTICE ACT OF 2022.

Section 804 of the Camp Lejeune Justice Act of 2022 (28 U.S.C. 2671 note) is amended—

(1) in subsection (b), by striking "in the United States District Court for the Eastern District of North Carolina";

(2) in subsection (c)—

(A) by amending paragraph (1) to read as follows:

"(1) IN GENERAL.—The party filing an action under this section shall be entitled to appropriate relief upon showing—

"(A) the existence of one or more relationships between the water at Camp Lejeune and the type of harm suffered by the individual; and

"(B) that the individual was present at Camp Lejeune for a period of not less than 30 days (whether or not consecutive)."; and

(B) in paragraph (2), by striking "the water at Camp Lejeune and the harm" and inserting "any water at Camp Lejeune and the type of harm";

(3) by amending subsection (d) to read as follows:

"(d) EXCLUSIVE JURISDICTION AND VENUE.—The United States District Court for the Eastern District of North Carolina shall have exclusive jurisdiction and venue for coordinated or consolidated pretrial proceedings and

resolution over any action filed under subsection (b), and a party filing the action may transfer such action to any United States district court situated within the United States Court of Appeals for the Fourth Circuit for trial of such action. Any action against the United States under subsection (b) shall, at the request of either party to such action, be tried by the court with a jury. The court shall advance an action filed under subsection (b) on the docket, and expedite the disposition of such action to the greatest extent possible.";

(4) in subsection (e)(1), by striking "latent disease" and inserting "latent harm";

(5) in subsection (j)(1), by striking "before the date of enactment of this Act" and inserting "before, on, or after the date of enactment of this Act"; and

(6) by adding at the end the following:

"(k) ATTORNEY FEES.—

"(1) IN GENERAL.—The total amount of attorneys fees under this section shall be in an amount that is equal to—

"(A) 20 percent of any settlement entered into before a civil action under subsection (b) is commenced; or

"(B) 25 percent of any judgement rendered or settlement entered into after a civil action under subsection (b) is commenced.

"(2) DIVISION OF FEES.—A division of a fee under paragraph (1) between attorneys who are not in the same firm may be made only if the division is in proportion to the services performed by each attorney.".

O

APPENDIX E

118TH CONGRESS
2D SESSION

S. 5257

To amend the Camp Lejeune Justice Act of 2022 to make technical corrections.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25, 2024

Mr. TILLIS (for himself, Mr. BLUMENTHAL, Mr. BUDD, Ms. KLOBUCHAR, Mr. RUBIO, Mr. WHITEHOUSE, Mr. BRAUN, Mr. COONS, Mrs. SHAHEEN, Ms. DUCKWORTH, Mr. PETERS, and Ms. HIRONO) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend the Camp Lejeune Justice Act of 2022 to make technical corrections.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Ensuring Justice for Camp Lejeune Victims Act of 2024".

SEC. 2. TECHNICAL CORRECTIONS TO THE CAMP LEJEUNE JUSTICE ACT OF 2022.

Section 804 of the Camp Lejeune Justice Act of 2022 (28 U.S.C. 2671 note prec.) is amended—

(1) in subsection (b)—

(A) by striking "in the United States District Court for the Eastern District of North Carolina"; and

(B) by inserting ", including a latent or potential harm," after "appropriate relief for harm";

(2) by amending subsection (c) to read as follows:

"(c) BURDENS AND STANDARD OF PROOF.—

"(1) IN GENERAL.—The party filing an action under this section shall be entitled to appropriate relief upon showing—

"(A) the existence of one or more relationships between the type of contaminant in any water at Camp Lejeune and the type of harm suffered by the individual, including latent or potential harm; and

"(B) that the individual was present at Camp Lejeune for a period of not less than 30 days, whether or not consecutive.

"(2) EVIDENTIARY STANDARDS.—To meet the burden of proof described in paragraph (1), a party shall produce evidence showing that the relationship between exposure to any level of contaminants of a

type in any water at Camp Lejeune and the type of harm is—

"(A) sufficient to conclude that a causal relationship exists; or

"(B) sufficient to conclude that a causal relationship is at least as likely as not.";

(3) by amending subsection (d) to read as follows:

"(d) EXCLUSIVE JURISDICTION AND VENUE.—The United States District Court for the Eastern District of North Carolina shall have exclusive jurisdiction and venue for coordinated or consolidated pretrial administrative and procedural matters and resolution over any action filed under subsection (b), and a party filing the action may transfer such action to any district court of the United States situated within the fourth judicial circuit for trial of such action, including all matters related to causation and admission of evidence. Any action against the United States under subsection (b) shall, at the request of either party to such action, be tried by the court with a jury. The court shall advance an action filed under subsection (b) on the docket, and expedite the disposition of such action to the greatest extent possible.";

(4) in subsection (e)—

(A) in paragraph (1), by striking "latent disease" and inserting "latent or potential harm"; and

(B) in paragraph (2), in the matter preceding subparagraph (A), by striking "shall be offset" and inserting "may be offset"; and

(5) by adding at the end the following:

"(k) ATTORNEY FEES.—

"(1) IN GENERAL.—The total amount of attorneys fees under this section shall be in an amount that is not more than—

"(A) 20 percent of any settlement entered into before a civil action under subsection (b) is commenced; or

"(B) 25 percent of any judgement rendered or settlement entered into after a civil action under subsection (b) is commenced.

"(2) DIVISION OF FEES.—A division of a fee under paragraph (1) between attorneys who are not in the same firm may be made only if the division is in proportion to the services performed by each attorney.

"(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall prohibit an individual or the legal representative of an individual and such indi-

vidual's or representative's attorney from agreeing to a fee award that is less than the maximum percentage specified in paragraph (1).".

SEC. 3. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect as if enacted on August 10, 2022, and shall apply to any claim under section 804 of the Camp Lejeune Justice Act of 2022 that is pending on the date of enactment of this Act.

○

APPENDIX F

I

117TH CONGRESS
2D SESSION

H. R. 6482

To establish a cause of action for those harmed by exposure to water at Camp Lejeune, North Carolina, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 25, 2022

Mr. CARTWRIGHT (for himself, Mr. PRICE of North Carolina, and Mr. MURPHY of North Carolina) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To establish a cause of action for those harmed by exposure to water at Camp Lejeune, North Carolina, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Camp Lejeune Justice Act of 2022".

SEC. 2. FEDERAL CAUSE OF ACTION RELATING TO WATER AT CAMP LEJEUNE, NORTH CAROLINA.

(a) IN GENERAL.—An individual, including a veteran (as defined in section 101 of title 38, United States Code),

(c) EXCLUSIVE JURISDICTION AND VENUE.—The United States District Court for the Eastern District of North Carolina shall have exclusive jurisdiction over any action filed under subsection (a), and shall be the exclusive venue for such an action. Nothing in this subsection shall impair the right of any party to a trial by jury.

(d) EXCLUSIVE REMEDY.—

(1) IN GENERAL.—An individual, or legal representative of an individual, who brings an action under this section for a harm described in subsection (a), including a latent disease, may not thereafter bring a tort action against the United States for such harm pursuant to any other law.

(2) HEALTH AND DISABILITY BENEFITS RELATING TO WATER EXPOSURE.—Any award made to an individual, or legal representative of an individual, under this section shall be offset by the amount of any disability award, payment, or benefit provided to the individual, or legal representative—

(A) under—

(i) any program under the laws administered by the Secretary of Veterans Affairs;

(ii) the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.); or

(iii) the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.); and

(B) in connection with health care or a disability relating to exposure to the water at Camp Lejeune.

(e) IMMUNITY LIMITATION.—The United States may not assert any claim to immunity in an action under this section that would otherwise be available under section 2680(a) of title 28, United States Code.

(f) NO PUNITIVE DAMAGES.—Punitive damages may not be awarded in any action under this section.

(g) DISPOSITION BY FEDERAL AGENCY REQUIRED.—An individual may not bring an action under this section before complying with section 2675 of title 28, United States Code.

(h) EXCEPTION FOR COMBATANT ACTIVITIES.—This section does not apply to any claim or action arising out of the combatant activities of the Armed Forces.

(i) APPLICABILITY; PERIOD FOR FILING.—

(1) APPLICABILITY.—This section shall apply only to a claim arising before the date of enactment of this Act.

(2) STATUTE OF LIMITATIONS.—A claim in an action under this section may not be commenced after the later of—

(A) the date that is 2 years after the date of enactment of this Act; or

(B) the date that is 180 days after the date on which the claim is denied under section 2675 of title 28, United States Code.

(3) INAPPLICABILITY OF OTHER LIMITATIONS.—Any applicable statute of repose or statute of limitations, other than under paragraph (2), shall not apply to a claim under this section.

○

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:23-CV-897

IN RE:	)	
	)	
CAMP LEJEUNE WATER LITIGATION	)	**ORDER**
	)	
THIS DOCUMENT RELATES TO:	)	
ALL CASES	)	

On February 6, 2024, this court granted the United States of America's ("United States" or "defendant") motion to strike plaintiffs' jury trial demand. See [D.E. 133]. On February 14, 2024, Plaintiffs' Leadership Group ("PLG") on behalf of plaintiffs Susan McBrine and David L. Petrie ("plaintiffs") moved to certify for immediate appellate review this court's order granting defendant's motion to strike plaintiffs' jury trial demand [D.E. 137] and filed a memorandum in support [D.E. 138]. See 28 U.S.C. § 1292(b). On March 4, 2024, the United States responded in opposition [D.E. 153]. On March 11, 2024, plaintiffs replied [D.E. 158]. As explained below, the court denies plaintiffs' motion to certify.

I.

"Finality as a condition of review is an historic characteristic of federal appellate procedure." Cobbledick v. United States, 309 U.S. 323, 324 (1940). Since 1958, however, a district court may certify an order for interlocutory appeal if the order "involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). Section 1292(b) requires a movant to show: (1) a controlling question of law where there is substantial ground for difference of opinion, (2) that the order may materially advance the ultimate termination of the litigation, and (3) "that exceptional

circumstances justify a departure from the basic policy of postponing appellate review until after the entry of a final judgment." Coopers & Lybrand v. Livesay, 437 U.S. 463, 475 (1978) (quotation omitted), superseded in part on other grounds by Fed. R. Civ. P. 23(f); see 28 U.S.C. § 1292(b); Caterpillar v. Lewis, 519 U.S. 61, 74 (1996) ("Routine resort to § 1292(b) requests would hardly comport with Congress'[s] design to reserve interlocutory review for 'exceptional' cases while generally retaining for the federal courts a firm final judgment rule." (quotation omitted)); Hogans v. Charter Commc'ns, Inc., No. 5:20-CV-566, 2022 WL 1500859, at *1–2 (E.D.N.C. May 12, 2022) (unpublished); Eshelman v. Puma Biotechnology, Inc., No. 7:16-CV-18, 2017 WL 9440363, at *1–2 (E.D.N.C. May 24, 2017) (unpublished); Stillwagon v. Innsbrook Golf & Marina, LLC, No. 2:13-CV-18, 2014 WL 5871188, at *9 (E.D.N.C. Nov. 12, 2014) (unpublished).

Certification under section 1292(b) is the exception, not the rule. See, e.g., Caterpillar, 519 U.S. at 74; Hill v. Robeson Cnty., No. 7:09-CV-5, 2010 WL 2680555, at *1 (E.D.N.C. July 6, 2010) (unpublished). Section "1292(b) should be used sparingly and thus . . . its requirements must be strictly construed." Myles v. Laffitte, 881 F.2d 125, 127 (4th Cir. 1989). Unless the movant satisfies the three statutory criteria under section 1292(b), "the district court may not and should not certify its order for an immediate appeal under section 1292(b)." Butler v. DirectSAT USA, LLC, 307 F.R.D. 445, 452 (D. Md. 2015) (cleaned up); see Ahrenholz v. Bd. of Trs. of Univ. of Ill., 219 F.3d 674, 676–77 (7th Cir. 2000). If the movant satisfies the three statutory criteria, then the "decision to certify an interlocutory appeal is firmly in the district court's discretion." Goodman v. Archbishop Curley High Sch., 195 F. Supp. 3d 767, 772 (D. Md. 2016) (quotation omitted); see Swint v. Chambers Cnty. Comm'n, 514 U.S. 35, 47 (1995) (Congress

"chose to confer on district courts first line discretion to allow interlocutory appeals"); Manion v. Spectrum Healthcare Res., 966 F. Supp. 2d 561, 567 (E.D.N.C. 2013).

As for the first factor, the "movant must state 'the precise nature of the controlling question of law involved.'" Stillwagon, 2014 WL 5871188, at *9 (quoting Fannin v. CSX Transp., Inc., 873 F.2d 1438, 1989 WL 42583, at *2 (4th Cir. 1989) (per curiam) (unpublished table decision)); see United States ex rel. Michaels v. Agape Senior Cmty., Inc., 848 F.3d 330, 340–41 (4th Cir. 2017); Eshelman, 2017 WL 9440363, at *1. A "controlling question of law" well-adapted to discretionary interlocutory review is "a narrow question of pure law whose resolution will be completely dispositive of the litigation, either as a legal or practical matter, whichever way it goes." Fannin, 1989 WL 42583, at *5; see Univ. of Va. Pat. Found. v. Gen. Elec. Co., 792 F. Supp. 2d 904, 910 (W.D. Va. 2011). A controlling issue of law must dispose of the litigation no matter how it is resolved, and "a question of law would not be controlling if the litigation would necessarily continue regardless of how that question were decided." Wyeth v. Sandoz, Inc., 703 F. Supp. 2d 508, 525 (E.D.N.C. 2010) (quotation omitted); see Fannin, 1989 WL 42583, at *5; Feinberg v. T. Rowe Price Grp., Inc., Civ. No. 17-0427, 2021 WL 2784614, at *2 (D. Md. July 2, 2021) (unpublished); Long v. CPI Sec. Sys., Inc., No. 3:12-CV-396, 2013 WL 3761078, at *2 (W.D.N.C. July 16, 2013) (unpublished).

A "substantial ground for a difference of opinion must arise out of a genuine doubt as to whether the district court applied the correct legal standard in its order." Wyeth, 703 F. Supp. 2d at 527 (quotation omitted). A substantial ground for difference of opinion does not occur when a party merely believes that the district court wrongly decided the issue or incorrectly applied the governing legal standard. See Ahrenholz, 219 F.3d at 676–77; Nat'l Interstate Ins. Co. v. Morgan & Sons Weekend Tours, Inc., No. 1:11CV1074, 2016 WL 1228622, at *2 (M.D.N.C.

Mar. 28, 2016) (unpublished); Butler, 307 F.R.D. at 454–55; McDaniel v. Mehfoud, 708 F. Supp. 754, 756 (E.D. Va. 1989). Merely because two courts may have "appl[ied] the same straightforward legal standard to similar facts and reach[ed] different results . . . does not mean that the standard itself (or the analysis courts must undertake in applying the standard) is in any way unclear." Hall v. Greystar Mgmt. Servs., L.P., 193 F. Supp. 3d 522, 527 (D. Md. 2016). A substantial ground for disagreement may also exist "if there is a novel and difficult issue of first impression." Adams v. S. Produce Distribs., Inc., No. 7:20-CV-53, 2021 WL 394842, at *3 (E.D.N.C. Feb. 4, 2021) (unpublished) (quotation omitted); see Karanik v. Cape Fear Acad., Inc., No. 7:21-CV-169, 2022 WL 16556774, at *5 (E.D.N.C. Oct. 31, 2022) (unpublished); United States ex rel. A1 Procurement, LLC v. Thermcor, Inc., 173 F. Supp. 3d 320, 323 (E.D. Va. 2016).

As for the second factor, resolving the controlling legal question must materially advance the ultimate termination of the litigation. See Coopers & Lybrand, 437 U.S. at 466 n.5. This factor focuses on whether resolving the controlling legal question would avoid a trial or otherwise substantially shorten the litigation. See, e.g., Agape Senior Cmty., Inc., 848 F.3d at 340–41. "[P]iecemeal review of decisions that are but steps toward final judgment[] on the merits are to be avoided, because they can be effectively and more efficiently reviewed together in one appeal from the final judgment[]." James v. Jacobson, 6 F.3d 233, 237 (4th Cir. 1993); see Caterpillar, 519 U.S. at 74; cf. Switz. Cheese Ass'n v. Horne's Mkt., Inc., 385 U.S. 23, 25 (1966) ("Orders that in no way touch on the merits of the claim but only relate to pretrial procedures are not . . . 'interlocutory' within the meaning of § 1292(a)(1).").

As for the third factor, exceptional circumstances exist when an interlocutory appeal "would avoid protracted and expensive litigation." Fannin, 1989 WL 42583, at *2 (quotation

omitted); see Medomsley Steam Shipping Co. v. Elizabeth River Terminals, Inc., 317 F.2d 741, 743 (4th Cir. 1963).

Plaintiffs argue that the jury-trial issue is a "novel and difficult" question of "first impression." [D.E. 138] 4. Although the jury-trial issue is one of first impression because Congress recently enacted the Camp Lejeune Justice Act ("CLJA"), that an issue is one of first impression does not alone warrant interlocutory appeal under section 1292(b). See, e.g., Flor v. BOT Fin. Corp. (In re Flor), 79 F.3d 281, 284 (2d Cir. 1996) (per curiam); Wyeth, 703 F. Supp. 2d at 527. Moreover, the court disagrees that the jury-trial issue is novel and difficult. Furthermore, the "substantial ground for a difference of opinion must arise out of a genuine doubt as to whether the district court applied the correct legal standard in its order." Wyeth, 703 F. Supp. 2d at 527 (quotations omitted). Here, the court applied the correct legal standard under Lehman v. Nakshian, 453 U.S. 156, 161–62, 168 (1981), and other applicable precedent and canons of construction. See [D.E. 133] 7–34.

Plaintiffs also argue that the jury-trial issue is a "new legal question" and has "special consequence." [D.E. 138] 5. The court agrees that the question is "new" because the CLJA is new, but disagrees that the question has "special consequence." This court is prepared to proceed expeditiously with bench trials. If a party is unhappy with the result of the bench trial, the party may appeal once the court enters final judgment. As part of any such appeal, the party can challenge this court's ruling concerning jury trials. If the court incorrectly held that plaintiffs are not entitled to a jury trial under the CLJA, the court then can hold jury trials. In the meantime, however, this court will resolve countless cases under the CLJA.

Next, plaintiffs argue that the jury-trial issue presents a "closer question" than decisions interpreting other statutes. Id. The court disagrees and believes that it properly analyzed the CLJA, Lehman, and other relevant precedent.

Finally, plaintiffs cite Department of Agriculture Rural Development Rural Housing Service v. Kirtz, 601 U.S. 42 (2024), and argue that Kirtz supports the conclusion that the CLJA permits a jury trial against the United States. See [D.E. 138] 6; [D.E. 158] 6. In Kirtz, the Supreme Court reaffirmed that "a waiver of sovereign immunity must be unmistakably clear in the language of the statute." Kirtz, 601 U.S. at 49 (quotation omitted); see Kimel v. Fla. Bd. of Regents, 528 U.S. 62, 73 (2000). The Supreme Court observed that in order to determine whether Congress waived sovereign immunity, a court must focus on "statutory text rather than legislative history." Kirtz, 601 U.S. at 49. "[N]o amount of legislative history can supply a waiver that is not clearly evident from the language of the statute." Id. (quotation omitted). Likewise, "when an unmistakably clear waiver of sovereign immunity appears in a statute, no amount of legislative history can dislodge it." Id. (quotations omitted). Applying these principles, the Supreme Court held that the Fair Credit Reporting Act of 1996 ("FCRA") unmistakably abrogated sovereign immunity against a federal agency because the FCRA "authorize[d] consumer suits for money damages against '[a]ny person' who willfully or negligently fails to comply with" the FCRA and defined "'person' to include 'any . . . governmental . . . agency.'" Kirtz, 601 U.S. at 51 (quoting 15 U.S.C. §§ 1681n(a), 1681o(a), 1681a(b)).

This court's February 6, 2024 analysis comports with Kirtz. See [D.E. 133] 7–34. Moreover, this court's analysis rejecting plaintiffs' reliance on the CLJA's legislative history and cases such as Galloway v. United States, 319 U.S. 372 (1943), and Pence v. United States, 316

U.S. 332 (1942), comports with Kirtz. See Kirtz, 601 U.S. at 49, 52–58; cf. [D.E. 158] 2, 5. Thus, Kirtz supports this court's decision striking plaintiffs' jury trial demand and does not support plaintiffs' motion to certify.

II.

In sum, the court DENIES plaintiffs' motion to certify for appeal the order granting defendant's motion to strike the demand for a jury trial [D.E. 137].

SO ORDERED. This 13 day of May, 2024.

RICHARD E. MYERS II
Chief United States District Judge

TERRENCE W. BOYLE
United States District Judge

LOUISE W. FLANAGAN
United States District Judge

JAMES C. DEVER III
United States District Judge