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May 14, 2026

Mr. Lyle W. Cayce
Clerk of the Court
U.S. Court of Appeals for the Fifth Circuit
600 S. Maestri Place, Suite 115
New Orleans, LA 70130

Re: *VDX Distro v. FDA*, No. 24-60537 (5th Cir.)

Dear Mr. Cayce:

The government writes to notify the Court that FDA recently authorized the marketing of four additional flavored e-cigarette products in menthol, mango, and blueberry flavors. See FDA, Marketing Granted Orders for Glas Inc. (May 5, 2026), <https://perma.cc/B4YK-6KBN>; FDA Press Release, *FDA Expands Market Access, Authorizes New ENDS Products* (May 5, 2026), <https://perma.cc/4GKB-749T> (Press Release). The newly authorized products, manufactured by Glas Inc., utilize device-access-restriction technology that requires the “user to verify their age and identity with a government-issued ID and pair the device with a smartphone via Bluetooth” and prevents the device from operating “if separated from the phone.” Press Release. The device also “conducts random biometric check-ins to periodically confirm the registered user is the one using the device.” *Id.* FDA found that Glas’s applications demonstrated that these device-access restrictions, combined with other marketing restrictions, are expected to effectively mitigate the ability of youth to use the products.

These authorizations further confirm that FDA has not instituted any ban—de facto or otherwise—on flavored e-cigarette products. The Tobacco

Control Act itself bans the marketing of e-cigarette products that lack FDA authorization, and FDA has now authorized eight menthol-flavored products and two fruit-flavored products. *See* FDA, *E-Cigarettes, “Vapes” and Other Electronic Nicotine Delivery Systems (ENDS) Authorized by the FDA* (May 5, 2026), <https://www.fda.gov/authorizedecigs>.

This development also undermines petitioners’ argument that FDA will only authorize the marketing of flavored e-cigarettes if the manufacturer has demonstrated that its products are more effective at promoting smoking cessation or reduction than tobacco-flavored products. FDA authorized Glas’s products, in part, because Glas sufficiently mitigated the risk to youth through device-access restrictions. The authorizations reflect that FDA is engaged in case-by-case adjudication, weighing the risks and benefits of each individual product to determine whether marketing the product would be appropriate for the protection of the public health. This adjudicatory approach allows FDA to respond flexibly to new developments and “innovation[s] [that] may serve in the effort to protect young people from threats posed by nicotine use and addiction.” Press Release.

Sincerely,

/s/ Ben Lewis
Ben Lewis

cc: Petitioners (via CM/ECF)