

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

L.G.M.,

Petitioner,

v.

ANTHONY J. LAROCCO,

**in his official capacity as Sheriff of the
Nassau County Correctional Center;**

WILLIAM P. JOYCE,

**in his official capacity as Acting Field Office
Director, New York City Field Office, U.S.
Immigration & Customs Enforcement;**

KRISTI NOEM,

**in her official capacity as Secretary, U.S.
Department of Homeland Security;**

PAMELA BONDI,

**in her official capacity as Attorney General,
U.S. Department of Justice.**

Respondents.

Civil Action No.

2:25-CV-02631-PKC

**PETITIONER'S
RESPONSE TO COURT'S
AUGUST 28 ORDER AND
OPPOSITION TO
RESPONDENTS' MOTION
TO ADJOURN**

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INTRODUCTION

L.G.M. filed a petition for writ of habeas corpus in this court to remedy his unconstitutionally prolonged detention by U.S. Immigration and Customs Enforcement (“ICE”). ECF 1. Now, after being granted a bond hearing and ordered released on bond, subject to conditions, L.G.M. continues to remain in ICE detention.

The Court’s order in this case is a final decision on the merits in the writ of habeas corpus; L.G.M. has been granted bond and any conditions of that bond must be determined forthwith to execute the judgment. The government Respondents cannot simply move to adjourn the bond conditions reply to avoid the Court’s order taking effect. *See* ECF 52. At the outset, the government Respondents’ filing of a notice of appeal does not automatically stay the execution of judgement. *See, e.g., Enoch v. Sessions*, No. 16-CV-85(LJV), 2017 WL 2080278, at *4 (W.D.N.Y. May 15, 2017) (internal citations omitted). In addition, there is a presumption of release from custody while an order granting habeas relief is under appellate review. *See Hilton v. Braunskill*, 481 U.S. 770, 774, (1987). The government Respondents have not filed a stay pending appeal in this case and the Court should not construe their motion to adjourn as a motion for stay. Even if the government Respondents had filed a stay, they cannot meet their heavy burden to warrant staying L.G.M.’s release from unconstitutionally prolonged civil immigration detention.

Ultimately, L.G.M. has been granted bond by this Court and the conditions of bond must be issued to give effect to this Court’s order. *Enoh*, 2017 WL 2080278, at *5 (“[A] petitioner suffers harm every day that he or she remains in custody in violation of the laws or Constitution of the United States; remedying such harm is the very essence of the writ of habeas corpus. . .”).

RELEVANT PROCEDURAL HISTORY

The underlying Petition for Writ of Habeas Corpus was filed in this Court on May 9, 2025. ECF 1. On June 6, 2025, L.G.M. filed a motion for a bond hearing or, in the alternative, for immediate release. ECF 23. In the motion, L.G.M. argued for a bond hearing to be held before the district court. *Id.* Government Respondents filed an opposition. ECF 27. On June 25, 2025, the Court denied the request for immediate release but granted the motion for a bond hearing to be held before the Court. ECF 30. A bond hearing was held on July 9, 2025. On July 31, 2025 the Court issued a Memorandum and Order granting L.G.M. release on bond, subject to conditions to be set. ECF 43 at 18-19. “The Court now grants L.G.M.’s release, subject to bond conditions to be determined with input from L.G.M. and Government Respondents.” *Id.* at 2. The parties were instructed to provide bond conditions within two weeks, which was subsequently extended by joint motion for one additional week, to August 21, 2025. ECF 44. Both parties filed their proposed bond conditions on August 21, 2025. ECF 48, 49.

On August 22, 2025, government Respondents filed a Notice of Appeal.¹ ECF 50. On August 27, 2025 government Respondents filed a “Letter Motion to Adjourn Conference scheduled for Sept. 8, 2025 and party submissions due on Aug. 29, 2025 *sine die*.” ECF 52. In the Letter requesting adjournment, the government Respondents’ sole application to the Court was to adjourn the bond conditions reply deadline and related status conference. *Id.* at 1. However, the government Respondents added, “[t]he Federal Respondents submit this application because the Court now lacks jurisdiction over this case following the Notice of Appeal filed on August 22, 2025 by the Federal Respondents.” *Id.*

¹ Petitioner files this response to the government Respondents’ motion to adjourn and to the issues set forth in the Court’s August 28, 2025 Docket Order. However, Petitioner preserves his right to raise any applicable appellate arguments relating to the government Respondents’ appeal.

On August 28, 2025 this Court directed Petitioner “to respond to Respondents’ contention . . . which the Court construes as an alleged lack of jurisdiction to effect Petitioner’s release from custody as previously ordered by the Court. . . .” *See* Docket Order entered 8/28/25. In addition, the Court directed Petitioner to address “whether Respondents’ appeal is interlocutory in nature and whether their motion to adjourn is, in reality or effect, a motion for a stay pending appeal.” *Id.* The Court ordered Petitioner to respond by September 10, 2025. *Id.* This timely response now follows.

ARGUMENT

An appeal of a district court’s decision does not automatically stay the court’s orders and the court retains jurisdiction to effectuate said orders. The government Respondents have not moved for a stay pending appeal. Even if their Letter to adjourn could be construed as a motion for stay, the government Respondents cannot, and have not, met their heavy burden to stay L.G.M.’s release. The government Respondents filed an appeal of a final decision on the merits by this Court—the decision granting bond to L.G.M.—and the Court retains jurisdiction to give effect to its order. The Supreme Court and Second Circuit recognize the presumption of release from custody for a successful habeas petitioner while pending appeal, and every day that L.G.M. remains detained following his grant of bond is an affront to the protections of the writ of habeas corpus.

I. The Government Respondents Have Not Filed a Motion for Stay Pending Appeal.

The government Respondents have not filed a motion for stay pending appeal. The Respondents filed a letter to “adjourn” the deadline to reply to bond conditions and a related status conference. ECF 52.

It is axiomatic that “the filing of a notice of appeal does not automatically stay the execution of judgment.” *Enoh v. Sessions*, No. 16-CV-85(LJV), 2017 WL 2080278, at *4 (W.D.N.Y. May 15, 2017) (citing *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.*, 2000 WL 511564, at *2 (S.D.N.Y. Apr. 27, 2000) (“The mere filing of an appeal does not act to suspend execution or enforcement of a judgment or injunction; a stay must be applied for and granted.”) (internal quotations omitted)). An appellant who desires a stay pending appeal must make a motion for stay and carry a heavy burden. *See* Fed. R. App. Pro. 8. A stay pending appeal represents an “intrusion into the ordinary processes of administration and judicial review.” *Nken v. Holder*, 556 U.S. 418, 427 (2009) (cleaned up). It is “an exercise of judicial discretion, and a party is never entitled to a stay pending appeal as a matter of right.” *Uniformed Fire Officers Ass’n v. de Blasio*, 973 F.3d 41, 48 (2d Cir. 2020) (quoting *Nken*, 556 U.S. at 434).

The government Respondents have not filed for a stay pending appeal and their motion should not be construed as such. A filing by counsel from the U.S. Attorneys’ Office, on behalf of the government Respondents in this case, cannot be liberally construed. *Cf. Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (internal citations omitted) (“A document filed *pro se* is to be liberally construed and . . . must be held to less stringent standards than formal pleadings drafted by lawyers.”); *see also Gill v. Silver Invs. Inc.*, 413 F. Supp. 3d 123, 125 (E.D.N.Y. 2016) (describing liberal construction of *pro se* pleadings). “[W]here a party is a licensed attorney, the party does not receive any ‘special solicitude.’” *Tyson-Phipps v. Rubio*, 779 F. Supp. 3d 440, 455 (S.D.N.Y. 2025) (citing *Tracy v. Freshwater*, 623 F.3d 90, 102-03 (2d Cir. 2010); *Bank v. Alarm.com Holdings, Inc.*, 828 F. App’x 5, 7 (2d Cir. 2020) (“As an initial matter, although he is proceeding *pro se*, [plaintiff] is a licensed attorney and is not entitled to any special solicitude.”))

In this case, the government Respondents did not file a motion for stay pending appeal, and they are not entitled to any latitude in construing their motion to adjourn as the heavy “intrusion into the ordinary process” to stay L.G.M.’s release from his unconstitutionally prolonged civil detention.

a. Even If the Court Could Liberaly Construe the Respondents’ August 27 Letter Motion, Respondents Have Not Met Their Heavy Burden to Justify a Stay.

Even if the Court could liberally construe the August 27 Letter as a motion for stay pending appeal, the government Respondents have not and cannot meet their heavy burden for a stay in this case. “The party requesting a stay bears the burden of showing that the circumstances justify an exercise of [the Court’s] discretion.” *Mahdawi v. Trump*, 136 F.4th 443, 449 (2d Cir. 2025) (citing *Nken*, 556 U.S. at 433–34); see also *Ozturk v. Hyde*, 136 F.4th 382, 390 (2d Cir. 2025) (finding the same and denying government’s motion for stay). “Ultimately, the party or parties seeking the stay . . . bear the heavy burden of demonstrating that a stay is warranted.” *Usherson v. Bandshell Artist Mgmt.*, No. 19-CV-6368 (JMF), 2020 WL 4228754, at *1 (S.D.N.Y. July 22, 2020) (internal quotations and citations omitted).

An application for a stay is evaluated under the traditional multi-factor test akin to a motion for preliminary injunction. *Nken*, 556 U.S. at 426, 434. “Different Rules of Procedure govern the power of district courts and courts of appeals to stay an order pending appeal. Under both Rules, however, the factors regulating the issuance of a stay are generally the same: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Hilton*, 481 U.S. at 776 (internal citations omitted); see also *Hirschfeld v. Bd. of Elections in City of New York*, 984 F.2d 35, 39 (2d Cir. 1993). “The first two factors ... are the most

critical. And where the government is a party to the suit, the final two factors merge.” *Ozturk*, 136 F.4th at 390 (citing *New York v. U.S. Dep’t of Homeland Sec.*, 969 F.3d 42, 58–59 (2d Cir. 2020)).

As to the first factor, the government Respondents have not offered any arguments to demonstrate a likelihood of success on the merits of their appeal. *See Agudath Israel of Am. v. Cuomo*, 980 F.3d 222, 226 (2d Cir. 2020) (“To obtain a stay of a district court’s order pending appeal, more is required [than obtaining a preliminary injunction], including a strong showing that the movant is likely to succeed on the merits.”) (internal quotation marks omitted and alteration adopted). The government Respondents have failed to set forth any argument regarding the likelihood of success, *see* ECF 52, nevermind the heightened standard for a “strong showing.” *Hilton*, 481 U.S. at 776. Nonetheless, the government Respondents do not have a likelihood of success on appeal. Fundamental to a federal court’s habeas authority is the ability to order release from detention. *See Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (“[T]he traditional function of the writ is to secure release from illegal custody.”); *Allen v. McCurry*, 449 U.S. 90, 98, n. 12 (1980) (noting that the “unique purpose” of the writ is “to release the applicant ... from unlawful confinement”); *see also Ostrer v. United States*, 584 F.2d 594, 596 n. 1 (2d Cir.1978) (finding that “[a] district court has inherent power to enter an order affecting the custody of a habeas petitioner who is properly before it contesting the legality of his custody”). The Second Circuit in *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024) held that prolonged detention under 8 U.S.C. § 1226(c) without individualized review violates the Fifth Amendment. And the government Respondents conceded, as they must, that L.G.M.’s prolonged § 1226(c) detention violates due process under the *Black* analysis. ECF 12 at *4 (“[T]he government acknowledges that this Court is currently bound by *Black* and that applying *Black* in this case likely would lead to a grant of the habeas

petition.”) Nothing in *Black* strips the district courts of their longstanding authority under 28 U.S.C. § 2241 to craft meaningful habeas relief, including the authority to directly hold a bail hearing. In fact, *Black* cites to the Supreme Court’s decision in *Jennings* for the reminder that “due process is flexible ... and ... calls for such procedural protections as the particular situation demands.” *Black*, 103 F.4th at 148 (citing *Jennings v. Rodriguez*, 583 U.S. 281, 314 (2018) (alteration and internal citations omitted). The applicable Supreme Court and Second Circuit caselaw hold that this Court has the authority to conduct a bond hearing and to order a detainee’s release, as the Court did in this case. Government Respondents have not made a showing of a likelihood of success on the merits and any attempt for a stay pending appeal must be denied.

As to the second factor, the government Respondents have not shown any irreparable injury, and it is in fact L.G.M. who will be irreparably injured if a stay is granted. “[A] petitioner suffers harm every day that he or she remains in custody in violation of the laws or Constitution of the United States; remedying such harm is the very essence of the writ of habeas corpus . . .” *Enoh*, 2017 WL 2080278, at *5. L.G.M. is a young man who has resided in the U.S. since 2016 and who is deteriorating in ICE detention. *See* ECF 23-1 at 8-9, filed under seal (Exhibit A, June Report of Dr. Corral). His continued detention causes irreparable injury as each day—now 389 days and counting—separates him from his mother, step-father and sister. While he remains in ICE custody, he is precluded from obtaining support and treatment and each day delays his ability to return to life as a young twenty-two-year-old man.

The third and fourth factors—whether issuance of the stay will substantially injure the other parties interested in the proceeding and where the public interest lies—similarly do not favor the government Respondents in this case. The Supreme Court has emphasized that “the writ of habeas corpus is itself an indispensable mechanism for monitoring the separation of powers,” and that

“the test for determining the scope of this [remedy] must not be subject to manipulation by those whose power it is designed to restrain.” *Boumediene v. Bush*, 553 U.S. 723, 765–66 (2008). To stay the Court’s order granting release on bond would compromise public faith not only in the habeas remedy but in the judiciary’s function and in the Great Writ itself. L.G.M. is subject to civil detention and such detention must not be punitive in purpose or effect. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). To the extent the government Respondents are seeking to delay L.G.M.’s release to await a decision from the Board of Immigration Appeals (“BIA”) on his underlying removal claims, such delay would be wholly inappropriate.² *See In re Gushlak*, No. 11 Misc. 218 (NGG), 2012 WL 2564523, at *3–4 (E.D.N.Y. July 2, 2012) (discussing arguments made in bad faith about lack of district court jurisdiction to enforce its order pending appeal of that order); *Garlick v. Miller*, No. 18CIV11038CMSLC, 2021 WL 4295210, at *2 (S.D.N.Y. Sept. 21, 2021) (“As Respondent conceded at oral argument, his reading of the June 2 Order seeks a situation that the June 2 Order did not establish, i.e., an automatic stay of Garlick’s release pending Respondent’s appeal of the June Order. . . . The DA provides no authority to suggest that the June 2 Order implicitly imposed a stay pending appellate review, and the Court declines to rewrite the clear instructions in the June 2 Order.”) (internal citations omitted).

² Government Respondents’ suggestion that a final decision by the BIA will change L.G.M.’s statute of detention and prevent his release on bond, ECF 53 at 2, is inaccurate and not relevant to the claims before the Court at this time. *See, e.g., Anariba v. Dir. Hudson Cnty. Corr. Ctr.*, 17 F.4th 434, 439 (3d Cir. 2021) (reversing the district court’s denial of habeas petitioner’s motion to reopen where district court improperly construed the change of immigration detention statute and *Zadvydas* claims as a new ground of relief); *Hassoun v. Searls*, 976 F.3d 121, 128 (2d Cir. 2020) (“The case would remain live as long as the petitioner was detained and the government refused to grant his release.”)

The government Respondents have not filed a stay, and even if their Letter motion could be construed as a stay, it is far from meeting their “heavy burden” such that a stay pending appeal must be denied.

II. The Court Ordered Release On Bond, There is a Presumption of Release From Custody While the Case Is Under Appellate Review, and the Court has Jurisdiction to Effectuate Its Order.

This Court has jurisdiction to enforce its orders notwithstanding a pending appeal. “At the outset, we emphasize that the existence of a pending appeal does not divest this Court of jurisdiction to enforce its judgments to the fullest extent.” *City of New York v. Venkataram*, No. 06 CIV. 6578 NRB, 2012 WL 2921876, at *3 (S.D.N.Y. July 18, 2012) (citing *United States v. Pescatore*, 637 F.3d 128, 144 (2d Cir.2011)). See also *In re Prudential Lines, Inc.*, 170 B.R. 222, 243–44 (S.D.N.Y.1994) (“[W]hile an appeal of an order or judgment is pending, the court retains jurisdiction to implement or enforce the order or judgment”).

In the context of immigration habeas petitions, the district courts within the Second Circuit have routinely confirmed that a notice of appeal does not divest the court of its authority to enforce its orders. See *Enoh*, 2017 WL 2080278, at *3 (considering the effect of a notice of appeal and concluding, “it generally is appropriate for a district court to follow up on a conditional writ of habeas corpus, regardless of whether an appeal is filed, because doing so essentially does nothing more than enforce a judgment.”) (internal citations omitted); *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 325 (W.D.N.Y. 2019) (“But as this Court has previously explained, ‘a federal court always retains jurisdiction to enforce its lawful judgments, including habeas judgments, [and] the court has the authority to see that its judgment is fully effectuated.’”) (alteration in original) (quoting *Gall v. Scroggy*, 603 F.3d 346, 352 (6th Cir. 2010)); *Mejia v. Barr*, No. 20-CV-6434-FPG, 2021 WL 6808404, at *3 (W.D.N.Y. Feb. 24, 2021) (finding that the notice of appeal did not

divest the district court of jurisdiction to enforce its decision).; *Thomas v. Searls*, No. 20-CV-6362-FPG, 2021 WL 358128, at *3 (W.D.N.Y. Jan. 4, 2021), enforcement denied, 515 F. Supp. 3d 34 (W.D.N.Y. 2021) (same).

Moreover, there is “undoubtedly [] a presumption of release from custody” while an order granting habeas relief is under appellate review. *See Hilton*, 481 U.S. at 774; *see also Waiters v. Lee*, 168 F. Supp. 3d 447, 451 (E.D.N.Y. 2016); *Garlick*, 2021 WL 4295210, at *4. The Supreme Court is clear: “[w]e think it would make little sense if this broad discretion allowed in fashioning the judgment granting relief to a habeas petitioner were to evaporate suddenly when either the district court or the court of appeals turns to consideration of whether the judgment granting habeas relief should be stayed pending appeal.” *Hilton*, 481 U.S. at 775.

This Court also ordered Petitioner to address “whether Respondents’ appeal is interlocutory in nature and whether their motion to adjourn is, in reality or effect, a motion for a stay pending appeal.” Docket Order entered 8/28/25. The government Respondents have filed an appeal of a final decision of this court on the merits, the decision to grant L.G.M.’s release on bond. ECF 43. “A final decision is one that ‘ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.’” *Bridgeport Guardians, Inc. v. Delmonte*, 537 F.3d 214, 221 (2d Cir. 2008) (citing *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 467, 98 S.Ct. 2454, 57 L.Ed.2d 351 (1978); *Ibeto Petrochem. Indus. Ltd. v. M/T Beffen*, 475 F.3d 56, 61 (2d Cir.2007)). Congress has vested the courts of appeals with “jurisdiction of appeals from all final decisions of the district courts of the United States.” 28 U.S.C. § 1291. “The statute’s finality requirement ensures that ‘interlocutory appeals—appeals before the end of district court proceedings—are the exception, not the rule.’” *Behrens v. Pelletier*, 516 U.S. 299, 305 (1996) (citing *Johnson v. Jones*, 515 U.S. 304, 309 (1995)). An interlocutory appeal is only permissible if it is (1) an injunction, 28 U.S.C. §

1292(a); (2) certified by both the district court and this Court, § 1292(b); or (3) an appeal under the collateral order doctrine, *see, e.g., Fischer v. N.Y. State Dep't of L.*, 812 F.3d 268, 273 (2d Cir. 2016). This case does not involve an injunction or a certification the courts. The third scenario for an interlocutory appeal, under the collateral order doctrine, is also not met in this case. “The requirements for appeal under the collateral order doctrine have been distilled down to three conditions: that an order “[1] conclusively determine the disputed question, [2] resolve an important issue completely separate from the merits of the action, and [3] be effectively unreviewable on appeal from a final judgment.” *Id.* at 273 (internal citations and quotations omitted). In this case, government Respondents’ appeal cannot be interlocutory because it is not “completely separate from the merits of the action” and is not “effectively unreviewable on appeal from a final judgment”; government Respondents have appealed the decision of this Court to grant the habeas petition and ordering L.G.M.’s release from detention on bond. Government Respondents awaited a final decision from this Court on July 31, 2025 before filing for appeal on August 22, 2025.³ *See* ECF 43, 50. This Court did not issue an interim ruling for release, for instance under *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001). *See* Memorandum & Order, July 31, 2025, ECF 43 at 5 n. 4 (explaining that the Court did not consider L.G.M.’s bond under *Mapp* because “*Mapp* governs bond *pending* a *separate* habeas petition, and here the Court has already granted L.G.M.’s Petition by ordering a bond hearing.”) (emphasis in original). Instead, the Court unequivocally granted the petition for writ of habeas corpus on the merits and ordered L.G.M.’s

³ Whether or not a judgment of dismissal has entered on a district court’s docket is not determinative of whether a final decision on the merits has been issued. *See, e.g., Leonhard v. United States*, 633 F.2d 599, 611 (2d Cir. 1980) (“[W]e do not find the absence of an actual judgment embodying the dismissal of Giambrone fatal to our jurisdiction. Although Fed.R.Civ.P. 58 requires that a judgment be set forth on a separate document, this requirement is intended merely to pinpoint, principally for the benefit of the appellant, the commencement of time for filing a notice of appeal.”)

release from detention on bond with conditions. The Court’s decision was a final decision on the writ of habeas corpus. *See Preiser*, 411 U.S. at 484; *Allen*, 449 U.S. at 98, n. 12; *Ostrer*, 584 F.2d at 596 n. 1 (2d Cir.1978) (finding that “[a] district court has inherent power to enter an order affecting the custody of a habeas petitioner who is properly before it contesting the legality of his custody.”)

The finality of the Court’s decision is not altered by the fact that conditions remain to be determined in consultation with the parties. The Court continues to have jurisdiction to execute its decision on the merits, granting release on bond to L.G.M. *See, e.g., Enoh*, 2017 WL 2080278, at *4 (considering jurisdiction in response to government’s appeal of habeas order and concluding “it generally is appropriate for a district court to follow up on a conditional writ of habeas corpus, regardless of whether an appeal is filed, because doing so essentially does nothing more than enforce a judgment.”) (internal citations omitted); *Catlin v. United States*, 324 U.S. 229 (1945) (defining a “final decision” for purposes of appeal “generally [as] one which ends the litigation *on the merits* and leaves nothing for the court to do but execute the judgment.”) (emphasis added); *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 373–74 (1981) (“leav[ing] nothing for the court to do but execute the judgment.”) (internal citations omitted); *Hall v. Hall*, 138 S. Ct. 1118, 1123–24 (2018) (same).

Ultimately, the government Respondents have appealed a decision on the merits by this Court granting release on bond to L.G.M. The government Respondents have not moved for a stay pending appeal, and even liberally construing their motion, they have not met their heavy burden to justify a stay of the Court’s Order. This Court retains jurisdiction to make its Memorandum & Order effective, including setting the final conditions for L.G.M.’s release on bond.

CONCLUSION

The Court has jurisdiction to issue the conditions of bond to make effective the grant of the writ of habeas corpus. The government Respondents have not filed a stay and cannot meet the heavy burden for a stay pending appeal.

Dated: September 10, 2025

Respectfully submitted,

/s/Elyssa Williams

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CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2025, a true and correct copy of the foregoing document was electronically filed via the Court's CM/ECF system which sends notice of electronic filing to all counsel of record.

By: /s/ Elyssa Williams

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