No. 19-1838

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

MARIAN RYAN, in her official capacity as Middlesex County District Attorney; RACHAEL ROLLINS, in her official capacity as Suffolk County District Attorney; COMMITTEE FOR PUBLIC COUNSEL SERVICES; CHELSEA COLLABORATIVE, INC.,

Plaintiffs-Appellees,

v.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; TAE D. JOHNSON, in his official capacity as the Acting Deputy Director of U.S. Immigration and Customs Enforcement and Senior Official Performing the Duties of the Director; TODD M. LYONS, in his official capacity as Acting Field Office Director of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; U.S. DEPARTMENT OF HOMELAND SECURITY; ALEJANDRO N. MAYORKAS, in his official capacity as Acting Secretary of United States Department of Homeland Security,

Defendants-Appellants.

On Appeal from the United States District Court for the District of Massachusetts
Case No. 19-cv-11003; The Hon. Indira Talwani

PLAINTIFFS-APPELLEES' UNOPPOSED MOTION TO DISMISS APPEAL AS MOOT AND VACATE PANEL DECISION

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INTRODUCTION

The appeal before this Court is moot, and has been for several weeks. Plaintiffs brought this suit to challenge Directive 11072.1 issued by U.S. Immigration and Customs Enforcement ("ICE"), entitled "Civil Immigration Enforcement Actions Inside Courthouses" (the "Directive"). As relevant to this appeal, Plaintiffs challenged that Directive under the Administrative Procedure Act ("APA"), and the district court issued a preliminary injunction on the ground that Plaintiffs are likely to succeed on that claim. On April 27, 2021, the Department of Homeland Security ("DHS") issued a Memorandum that "supersedes and revokes ICE Directive 11072.1," and replaces it with "interim guidance" that "will be replaced after the Secretary issues his final guidance after engaging with you." This Memorandum—which was unilaterally issued by DHS without any discussion or consultation with Plaintiffs—renders Plaintiffs' claims moot: The Directive is no longer in effect, DHS's new guidance is interim, and it is unclear how Defendants will even enforce that interim policy. Plaintiffs therefore had no choice but to dismiss their Complaint as moot on May 21, 2021, and the preliminary injunction at issue in this appeal is no longer in effect.

Because this case became moot before either the mandate issued or the time for seeking certiorari expired—and, indeed, even before this Court ruled on Plaintiffs' rehearing petition—this Court should dismiss this appeal and vacate the

panel's decision. The Supreme Court has made clear that the "established practice" when a case becomes moot before certiorari review is to "vacate the judgment below and remand with a direction to dismiss," especially when, as here, "mootness occurs through the unilateral action of the party who prevailed in the lower court." *Azar v. Garza*, 138 S. Ct. 1790, 1972 (2018) (per curiam) (internal quotation marks and alterations omitted). Given this established practice, "it is appropriate for a court of appeals to vacate its own judgment if it is made aware of events that moot the cause during the time available to seek certiorari." 13C Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 3533.10.3 (3d ed.). And, at the very least, "vacatur" is the "standard practice of … the courts of appeals" when a case becomes moot before the mandate issues. *Clarke v. United States*, 915 F.2d 699, 706 (D.C. Cir. 1990) (en banc).

This case falls within the heartland of cases in which vacatur is appropriate: This case became moot because Defendants, after prevailing before the panel, revoked the challenged policy before this Court denied rehearing en banc or issued its mandate, and before the period for seeking certiorari passed. This Court should therefore dismiss this appeal and vacate the panel's decision. Defendants have informed Plaintiffs that they take no position on this motion at this time.

Plaintiffs also respectfully request that the Court delay issuance of the mandate pursuant to Fed. R. App. P. 41(b) while considering this motion.

BACKGROUND

Plaintiffs brought this suit to challenge a specific ICE Directive as well as courthouse arrests carried out pursuant to that Directive. *See* JA054-061.[1] Plaintiffs' allegations and evidentiary submissions supporting, among other things, their constitutional standing relied heavily on the details of how ICE enforced its Directive and the impact of that enforcement on Plaintiffs' operations. *See, e.g.*, JA23-24, JA36-51, JA160-181. As most relevant to this appeal, Plaintiffs alleged that that the Directive is final agency action subject to review under the Administrative Procedure Act ("APA"), and that the Directive exceeds ICE's statutory authority. In Plaintiffs' motion to preliminarily enjoin enforcement of that Directive, Plaintiffs relied entirely on their likelihood of success on the merits of that APA claim. *See* JA073.

The district court granted Plaintiffs' motion. The district court's decision that Plaintiffs have Article III standing rested on the evidence Plaintiffs submitted concerning ICE's enforcement of the Directive and the impact those enforcement practices had on Plaintiffs. A013-017.[2] The panel's decision endorsed that part of the district court's decision. *Ryan v. ICE*, 974 F.3d 9, 17 & n.4 (1st Cir. 2020).

[1] Citations to "JA" pages are to the Joint Appendix, filed January 30, 2020.

[2] Citations to "A" pages are to the Addendum to Appellants' Opening Brief, filed on January 16, 2020.

Defendants appealed the district court's decision granting a preliminary injunction. On September 1, 2020, a three-Judge panel of this Court released a decision that vacated the district court's preliminary injunction. *Ryan*, 974 F.3d at 15. On October 19, 2020, Plaintiffs filed a petition for panel rehearing and rehearing en banc.

On January 20, 2021, Joseph R. Biden was inaugurated as President. Shortly thereafter, Defendants informed Plaintiffs in this case and other cases challenging the Directive that it was "reviewing" the Directive as part of the new Administration's "review of policies and practices concerning immigration enforcement." *See* Ex. 1 at 1.[3] Given that the result of the review might "change the contours of the issues in this case," the parties stipulated, on March 8, 2021, to various extensions in the district court in order to "conserve judicial and the parties' resources." *Id.* at 1-2.

On April 27, 2021, DHS issued a Memorandum to ICE and U.S. Customs and Border Patrol ("CBP") that "supersedes and revokes ICE Directive 11072.1, entitled 'Civil Immigration Enforcement [Actions] Inside Courthouses,' that was issued on January 30, 2018." Ex. 2 at 1 (the "Memorandum"). In its place, DHS provided "interim guidance that governs our civil immigration enforcement actions

[3] Cites to "Ex." refer to exhibits to the Declaration of David J. Zimmer in Support of Plaintiffs-Appellees' Unopposed Motion To Dismiss Appeal as Moot and Vacate Panel Decision ("Zimmer Decl."), attached hereto.

in or near courthouses" that "will be replaced after the Secretary issues his final guidance after engaging with you." *Id.* That interim guidance recognized, consistent with Plaintiffs' arguments in this case, that "[e]xecuting civil immigration enforcement actions in or near a courthouse may chill individuals' access to courthouses and, as a result, impair the fair administration of justice." *Id.* DHS's Memorandum therefore revokes authorization for most civil courthouse arrests, allowing them only in a limited set of situations, such as when there is an "imminent risk of death, violence, or physical harm," a "national security threat," or a "threat to public safety." *Id.* at 2. The goal, the Memorandum explained, was to avoid "unnecessarily imping[ing] upon the core principle of preserving access to justice." *Id.* at 1. As the government has repeatedly made clear, this interim guidance explicitly "revoke[d]" the Directive, which was the "focus of this lawsuit" and the "subject of this appeal." *Id.* at 1; Ex. 3 at 2; Ex. 4 at 1; Gov't Rule 28(j) Letter at 1 (May 11, 2021).

The parties immediately recognized that this Memorandum significantly impacted this case. On May 4, 2021, the parties' stipulated to the district court that, because the Directive was the "focus of this lawsuit," and because that Directive had been "supersede[d] and revoke[d]," the parties needed time to "determine the effect of the new interim guidance on this case and how the parties wish to proceed in this litigation." Ex. 3 at 1-2. Then, on May 11, Defendants

informed this Court of the new Memorandum, explaining, again, that it "supersedes and revokes ICE Directive 11072.1," which is "the subject of this appeal." Gov't Rule 28(j) Letter at 1 (May 11, 2021)

After carefully considering the impact of the Memorandum, Plaintiffs determined that their claims challenging the superseded and revoked Directive are moot. Thus, on May 13, 2021 (before this Court ruled on Plaintiffs' rehearing petition), Plaintiffs' counsel wrote to Defendants' counsel proposing that, because the parties apparently agreed that Defendants' decision to revoke the Directive renders Plaintiffs' claims moot, the parties agree to (1) dismiss the district court case as moot and (2) dismiss this appeal and ask this Court to vacate the panel's decision pursuant to *United States v. Munsingwear*, 340 U.S. 36 (1950). Ex. 4 at 1.

On May 18, 2021, before Defendants responded to Plaintiffs' proposal, this Court denied Plaintiffs' petition for panel rehearing and rehearing en banc.

On May 21, 2021, Plaintiffs voluntarily dismissed their claims as moot pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i). Ex. 5. The district court's docket now reflects that the case is "CLOSED" and "Terminated."

On May 20, in response to Plaintiffs' request for Defendants' position on this motion, Defendants asked Plaintiffs to inform this Court that "the government takes no position on the motion at this time but may file a response depending on the contents of the motion."

ARGUMENT

I. Defendants' unilateral decision to revoke the Directive mooted Plaintiffs' challenge to that final agency action.

There can be no serious dispute that the claims upon which Plaintiffs instituted this action are moot. Plaintiffs' claims all challenge the Directive and arrests conducted pursuant to the Directive, and the Directive is no longer in force. Moreover, Defendants did not make a "a mere informal promise or assurance … that the challenged practice will cease," which does not necessarily render a suit moot. *See Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1118 (10th Cir. 2010). Defendants formally "supersede[d] and revoke[d]" the Directive and replaced it with a new, interim, policy. Ex. 2 at 1. This Court and others have recognized that a challenge to a formally superseded policy is moot. *See, e.g.*, *Gulf of Maine Fisherman's All. v. Daley*, 292 F.3d 84, 88 (1st Cir. 2002) (challenge to "a regulation which is no longer in effect because it has been replaced by a series of subsequent Frameworks" is moot); *see also Akiachak Native Cmty. v. United States Dep't of Interior*, 827 F.3d 100, 105-06 (D.C. Cir. 2016) (where a "regulation no longer exists, [courts] can do nothing to affect [a party's] rights relative to it, thus making [such] case[s] classically moot for lack of a live controversy"); *Rio Grande*, 601 F.3d at 1118 (challenge to policy that agency had "superseded and rendered obsolete" was moot); *Clarke*, 915 F.2d at 701 (challenge to provision that had been "superseded" was moot).

Nor, to the extent it is relevant to mootness, do Plaintiffs currently have any viable basis to challenge Defendants' new Memorandum. While the Memorandum does not bar *every* courthouse arrest that Plaintiffs challenged in their now-dismissed suit, it recognizes the core principle on which Plaintiffs' suit rested: that civil immigration arrests in and around courthouses "may chill individuals' access to courthouses and, as a result, impair the fair administration of justice." Ex. 2 at 1. And, as a result, the Memorandum limits civil courthouse arrests to what at least facially appears to be a narrow set of circumstances.

Plaintiffs' standing arguments and constitutional claims relied on allegations about how broad the Directive was, how aggressively it was enforced, and the impacts of that broad policy and aggressive enforcement. *See, e.g.*, JA18-21, JA36-51, JA160-181. Plaintiffs have no basis for making similar allegations about the Memorandum at this time given that it has yet to be enforced. For example, it is not yet clear how Defendants will interpret vague terms like "national security threat" and "threat to public safety"; how the Memorandum will impact individuals' access to the courts or the States' operation of their courts; or precisely how the Memorandum will impact Plaintiffs. Moreover, given the Memorandum's repeated recognition that civil immigration arrests near courthouses "impair the fair administration of justice," there is reason to think that Defendants will interpret

the Memorandum's limited authorization for courthouse arrests narrowly, and conduct very few, if any, civil courthouse arrests.

Even if Plaintiffs could establish standing, a challenge to the Memorandum under the APA would face an additional hurdle on the facts as they currently stand: The Memorandum is, on its face, only "interim," and "will be replaced after the Secretary issues his final guidance after engaging with" ICE and CBP. Ex. 2 at 1. Thus, the Memorandum is not, at least right now, "final agency action" subject to APA review. *See* 5 U.S.C. § 704 (limiting APA review to "final agency action"). Moreover, Defendants' counsel has informed Plaintiffs that Defendants "have no further information on the timeline for a final policy at this time." Ex. 4 at 1. Defendants cannot, of course, avoid APA review simply by calling something "interim" that is, in reality, final. But, at this point in time, Plaintiffs have no factual basis for disputing Defendants' representation that the Memorandum is "interim" and "will be replaced after the Secretary issues his final guidance."

Defendants' unilateral decision to revoke the Directive, and hence moot Plaintiffs' underlying district court case, moots this appeal for an additional reason: The preliminary injunction Defendants challenged in this appeal is no longer in effect. Given that Defendants' unilateral conduct left Plaintiffs with no live claims, Plaintiffs voluntarily dismissed the district court case as moot on May 21, 2021—which, of course, resulted in lifting the preliminary injunction. Issuing the

mandate would therefore have no effect: There is no injunction left to vacate and no live district court case to which the mandate could issue. Because this Court "cannot affect the matter in issue in the case before it," this appeal is moot. *Church of Scientology of California v. United States*, 506 U.S. 9, 12 (1992).

II. The Court should vacate the panel's decision.

Under established law from the Supreme Court and courts of appeals, Defendants' unilateral decision to revoke the Directive, and moot out Plaintiffs' claims, requires vacatur of the panel's decision in this case.

The Supreme Court has made clear that vacatur is the "established practice" for instances in which a case "has become moot while on its way [t]here." *U.S. Bancorp. Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 22 (1994) (quoting *Munsingwear*, 340 U.S. at 39). "One clear example where '[v]acatur is in order' is 'when mootness occurs through … the 'unilateral action of the party who prevailed in the lower court.'" *Azar*, 138 S. Ct. at 1792 (quoting *Arizonans for Official English v. Arizona*, 520 U.S. 43, 71-72 (1997)). That common-sense rule exists so the party who receives a favorable judgment does not retain the benefit of that judgment while simultaneously preventing the losing party from seeking further review. *Arizonans*, 520 U.S. at 71-72; *Camreta v. Greene*, 563 U.S. 692, 713 (2011) ("The point of vacatur is to prevent an unreviewable decision 'from spawning any legal consequences[.]'" (quoting *Munsingwear*, 340 U.S. at 40-41)).

In conformance with that established Supreme Court practice, Wright & Miller have explained that "it is appropriate for a court of appeals to vacate its own judgment if it is made aware of events that moot the cause during the time available to seek certiorari." 13C Wright & Miller, *supra*, § 3533.10.3. And the courts of appeals have uniformly recognized that, at the very least, vacatur is appropriate when a case becomes moot prior to issuance of the mandate. As the en banc D.C. Circuit put it in *Clarke*, where a case becomes moot before "disposition of the suggestion for *en banc* review and … issuance of the mandate, the standard practice of both the Supreme Court and the courts of appeals calls for automatic vacatur." 915 F.2d at 706; *see also Stewart v. Southern Ry. Co.*, 315 U.S. 784, 802 (1942) (per curiam) (vacating Supreme Court decision when the case became moot while rehearing petition was pending).[4]

[4] *See also, e.g.*, *IAL Aircraft Holding, Inc. v. FAA*, 216 F.3d 1304, 1305-06 (11th Cir. 2000) (vacating panel decision because, "when a case becomes moot after the panel publishes its decision but before the mandate issues, we dismiss the appeal, vacate the district court's judgment, and remand to the district court with instructions to dismiss the case"); *Indep. Union of Flight Attendants v. Pan Am. World Airways*, 966 F.2d 457, 459 (9th Cir. 1992) ("Because this appeal became moot while the petition for rehearing and suggestion for rehearing *en banc* were still pending and before the mandate issued, the appropriate disposition is to vacate the panel's opinion and dismiss the appeal."); *In re Ghandtchi*, 705 F.2d 1315, 1316 (11th Cir. 1983) (vacating panel decision when case became moot before the mandate issued because "[w]e see no reason why this court should not declare the case moot when the mandate has not yet issued, if the Supreme Court can do the same while the case is pending before it on petition for certiorari, that is, the Court has not yet taken jurisdiction"); *United States v. Caraway*, 483 F.2d 215, 216 (5th Cir. 1973) (per curiam) (vacating panel decision where district court case was

Under these principles, vacatur is plainly appropriate here. This case became moot on April 27, 2021, when Defendants revoked the challenged Directive while Plaintiffs' rehearing petition was still pending before this Court. *See Clarke*, 915 F.2d at 706 (case became moot on the date the challenged act "lapse[d]"). At the very least the case is moot *now*, given that the underlying case has been dismissed, the preliminary injunction at issue in this appeal is no longer in effect, and this Court has not yet issued its mandate. The "standard practice" under Supreme Court and court of appeals precedent therefore requires vacatur. *Clarke*, 915 F.2d at 706.

This case is, in fact, on all fours with the D.C. Circuit's en banc decision in *Clarke*. In that case, a D.C. Circuit panel had held that the First Amendment prohibited Congress from enforcing a federal statute that conditioned funding for the D.C. municipal government on the D.C. City Council's enactment of a certain law. 915 F.2d at 700. While the federal government's rehearing petition was pending, Congress used its authority over D.C. to enact the law directly, hence mooting the case. *Id.* Several weeks after the case had become moot, the D.C. Circuit denied the rehearing petition. *Id.* Rather than issue the mandate, however, the D.C. Circuit, sitting en banc, held that the appropriate course, given the case's

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dismissed "following [the panel's decision] … but prior to the issuance of the mandate").

mootness, was to dismiss the appeal and vacate the panel's decision. *Id.* at 706. The court explained the "standard practice" of "vacatur" when a case becomes moot while a rehearing petition is pending. *Id.* And it held that, while the court had denied the rehearing petition after the case had become moot, "this sequence does not affect the matter," because "the outcome on the merits cannot moot the mootness." *Id.* at 707.

There are exceptions to the equitable remedy of vacatur, but those exceptions do not apply here—to the contrary, the equities here strongly favor vacatur. Most importantly, this is not a case in which the parties settled or the losing party is responsible for mootness. *See U.S. Bancorp*, 513 U.S. at 25-26. The panel ruled for Defendants, and yet it is Defendants' unilateral decision to revoke the Directive, and replace it with an "interim" policy that "will be replaced," that mooted Plaintiffs' claims. Plaintiffs played no role whatsoever in that decision, and should not be deprived of their opportunity to further challenge the panel's decision. *See* Zimmer Decl. ¶ 4; *U.S. Bancorp*, 513 U.S. at 24 ("A party who seeks review of the merits of an adverse ruling, but is frustrated by" the "unilateral action of the party who prevailed below" "ought not in fairness be forced to acquiesce in the judgment").

In addition, the panel's decision, like the panel's decision in *Clarke*, carries "broad implications," as it is the "sole court of appeals decision"—and, in fact, the

sole decision from *any* court—upholding ICE's Directive. 915 F.2d at 708. Vacatur's purposes of "preventing an unreviewable decision from spawning any legal consequences," *Camreta*, 563 U.S. at 712 (internal quotation marks omitted), is especially important given how significant those legal consequences would be for district courts in the First Circuit that faced a challenge to any future attempt to revive the Directive (or to adopt a similarly broad authorization of civil courthouse arrests).

Nor does this Court's denial of Plaintiffs' rehearing petition undermine the case for vacatur. Vacatur is "appropriate" in the "court of appeals" when the case becomes moot "during the time available to seek certiorari." 13C Wright & Miller, *supra*, § 3533.10.3. At the very least, vacatur is appropriate when the case becomes moot "after the panel publishes its decision *but before the mandate issues*." *IAL Aircraft Holding*, 216 F.3d at 1305-06 (emphasis added).

In addition, the relevant time period for considering mootness and vacatur is the date of the DHS Memorandum—which was *before* this Court denied rehearing. Plaintiffs had, in fact, proposed to Defendants, before this Court's order, that the parties jointly dismiss the district court case as moot, dismiss this appeal as moot, and move to vacate the panel's decision. Ex. 4 at 1. As in *Clarke*, the fact that this Court denied rehearing *after* the case had become moot "cannot moot the mootness." 915 F.2d at 707. Similarly, in *IAL Aircraft Holding*, the court realized,

after it had issued its mandate, that the case had become moot *before* the mandate had issued. Because vacatur would have been appropriate at the time the case had become moot, the court "recall[ed] the mandate and vacate[d] [its] earlier decision." 216 F.3d at 1306-07. Given that the mandate in this appeal has not even issued, dismissal and vacatur are even more appropriate.

Finally, though it is the *opportunity* for further review that warrants vacatur, not the likelihood of success in that review, it is entirely possible that the Supreme Court would have granted review had Defendants not unilaterally mooted Plaintiffs' claims. The panel's decision is a significant outlier: All five district courts to consider the legal arguments at issue in this case have ruled against the government, including one decision that specifically rejected the panel's decision as "flawed." *Velazquez-Hernandez v. ICE*, __ F. Supp. 3d __, 2020 WL 6712223, at *8 (S.D. Cal. Nov. 16, 2020); *see also New York v. ICE*, 466 F. Supp. 3d 439, 445-47 (S.D.N.Y. 2020) (citing *New York v. ICE*, 431 F. Supp. 3d 377, 392-93 (S.D.N.Y. 2019)); *Washington v. DHS*, __ F. Supp. 3d __, 2020 WL 1819837, at *10 (W.D. Wash. Apr. 10, 2020); *Doe v. ICE*, 490 F. Supp. 3d 672, 689-94 (S.D.N.Y. 2020). Moreover, had Defendants not revoked the Directive, the Second Circuit was poised to consider the government's appeal from the *New York v. ICE* decision, which would have created a circuit split if that court had sided with the five district courts rather than this Court. Thus, while vacatur does not

turn on "assumptions about the merits," *U.S. Bancorp*, 513 U.S. at 27, it is far from clear that the panel's decision would have been the last word in this appeal had Defendants not revoked the Directive.

In sum, this is precisely the type of case in which vacatur is appropriate. Defendants succeeded in defending the Directive before the panel but then, before this Court could rule on Plaintiffs' rehearing petition or the Supreme Court could consider any petition for certiorari, Defendants promptly revoked the Directive and mooted Plaintiffs' claims. This Court should thus "clear[] the path for future relitigation of the issues between the parties," should it become necessary in the future, and not bind Plaintiffs (and others in the First Circuit) to a judgment that Plaintiffs could not fully challenge. *Munsingwear*, 340 U.S. at 40.

III. This Court should stay issuance of the mandate pending resolution of this motion.

Plaintiffs respectfully request that, pursuant to Federal Rule of Appellate Procedure 41(b), the Court stay issuance of the mandate pending resolution of this motion. *See* Fed. R. App. P. 41(b) ("The court may shorten or extend the time [for issuing the mandate] by order."). As explained above, dismissal and vacatur is appropriate when an appeal becomes moot prior to issuance of the mandate, and this appeal is indisputably moot—the preliminary injunction at issue in this appeal is no longer in effect and there is no longer a live district court case to which the

mandate could issue. Thus, to avoid the need to recall the mandate, the Court should stay issuance of the mandate until it rules on this motion.

CONCLUSION

For all of these reasons, Plaintiffs respectfully request that this Court dismiss this appeal and vacate the panel's decision. Plaintiffs also request that the Court delay issuance of the mandate pending its resolution of this motion.

Dated: May 24, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2). This motion contains 4,043 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This motion complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6). This brief has been prepared in a proportionally spaced typeface, 14-point Times New Roman font, using Microsoft Word 2010.

/s/ David J. Zimmer
David J. Zimmer

CERTIFICATE OF SERVICE

I certify that on May 24, 2021, I filed and served the foregoing Motion and accompanying papers with the Clerk of the Court by causing a copy to be electronically filed via the appellate CM/ECF system. I also hereby certify that the participants in the case are registered CM/ECF users and will be served via the CM/ECF system.

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