

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

YULIETH GOMEZ MEJIA

PETITIONER

v.

NO. 4:25-CV-82-RGJ

KRISTI NOEM, in her Official Capacity as
Secretary, Department of Homeland Security;
TODD LYONS, in his Official Capacity as
Acting Director, U.S. Immigration and
Customs Enforcement;
PAM BONDI, in her Official Capacity as
Attorney General of the United States; and
JASON WOOSLEY, in his Official Capacity as
Grayson County Jailer

RESPONDENTS

**RESPONDENTS' OPPOSITION TO
PETITIONER'S BRIEF IN SUPPORT OF HABEAS PETITION**

Respondents, Kristi Noem, in her official capacity as Secretary for the Department of Homeland Security, and Todd Lyons, in his official capacity as Acting Director for U.S. Immigration and Customs Enforcement (ICE), and Pam Bondi, in her official capacity as Attorney General of the United States file the current brief pursuant to the Court's Memorandum of Conference and Order dated August 13, 2025, [Doc. 8] and in response to Petitioner's brief [Doc. 10].

FACTUAL BACKGROUND

A Border Patrol Agent apprehended Petitioner, a citizen of Colombia, shortly after she unlawfully entered the country in December 2022. *See* Form I-213, Record of Deportable/Inadmissible Alien attached hereto as Exhibit "A". Mejia was detained within 100 miles of the border near Jacumba, California. *Id.* at p. 1. "The Border Patrol

Agent determined [Petitioner] had unlawfully entered the United States from Mexico on December 11, 2022, at a time and place other than as designated by the Secretary of the Department of Homeland Security of the United States.” *Id.* at p. 2. Because she lacked the necessary legal documents to enter, pass through, or to remain in the United States, Petitioner was arrested and transported for further processing. *Id.* at pp. 2-3. The Form I-213 (Record of Deportable/Inadmissible Alien) created at or near her apprehension informs that Mejia admitted to illegally crossing the international boundary. *Id.* at p. 3.

Determined to be the head of household with custody of a minor child, and because of cited detention capacity issues at “the San Diego Sector,” Petitioner was granted parole and informed she must report to the Enforcement and Removal Operations (ERO) office for processing.¹ *Id.* at p.3; *see also* I-385 attached hereto as Exhibit “B” and Decl. of Christopher Wiet at PageID # 24 (DN 6-1). Mejia’s parole status had an express expiration date of February 11, 2023. Ex. B at p. 1. About two weeks after the expiration of her parole, in February 2023, Mejia, living then in Spencer, Indiana, emailed with the Indianapolis ICE office and was told to appear on July 28, 2025.² Pet. Brf. at Ex. 3 (PageID # 56-58); *see also* Ex. 1 at p. 1. Thereafter, on or about July 31, 2023,

¹ The I-213 expressly states that Mejia “was identified as the head of household; as such, she was processed as Head of Household and released with Alternate to Detention as a Condition of Parole. She was informed that she and her family must report to the ERO office for processing.” Ex. A at p. 3.

² Petitioner claims that “[s]he did not miss any report dates required by ICE,” Pet. Brf. at PageID # 40; however, the record seems to indicate that the July 28, 2025, appearance was the only date Mejia was told to report.

Petitioner submitted an Application for Asylum and for Withholding of Removal. Pet. at PageID # 1.

On July 28, 2025, Petitioner reported to ERO's Indianapolis office for an Alternative to Detention evaluation.³ DN 6-2 at PageID # 31. During the evaluation, Mejia reportedly informed that her minor "daughter is currently residing in New York with her Biological Father."⁴ *Id.* at PageID # 32. Petitioner was then taken into custody and provided a Form I-860 Notice and Order of Expedited Removal.⁵ *Id.*; *see also* Wiet Decl. at PageID # 25.

Mejia is currently detained at the Grayson County Detention Center. Wiet Decl. at PageID # 26; Pet. at PageID # 2. She initiated the current action on July 31, 2025. Pet. [DN 1]. On August 22, 2025, Petitioner was issued a Notice to Appear (NTA) before an immigration judge on September 9, 2025. That NTA moved her out of the expedited removal process and bypasses the credible fear interview with an asylum officer and will allow her to present her credible fear claim directly to an immigration judge (NTA attached hereto as Exhibit "C").

³ Mejia admits in her brief that "ICE communicated to her in Spanish and English." Pet. Brf. at PageID # 41.

⁴ *See* Pet. Brf. at Page ID # 40 wherein Mejia admits she told an ICE employee that she was not legally married and there was "no" minor child. She claims she was thereafter told her documents were no longer correct, suggesting that her status as a head of the household with a minor child was no longer valid. *Id.*

⁵ Petitioner's July 28, 2025, Form I-213 also informs: "FEAR: GOMEZ-MEJIA does not claim fear of persecution or torture if returned to her native country of Columbia but she refused to sign any paperwork without a lawyer present." DN 6-2 at PageID # 32.

LEGAL BACKGROUND

Parole

An “applicant for admission” is defined, in relevant part, as an alien “who arrives in the United States [] whether or not at a designated port of arrival.” 8 U.S.C. § 1225(a)(1). An alien, like Petitioner, “who tries to enter the country illegally is treated as an ‘applicant for admission.’” *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (quoting INA § 235(a)(1), 8 U.S.C. § 1225(a)(1)). Aliens who are detained shortly after unlawful entry have not “effected an entry,” but are rather in the same position as an alien seeking admission at a port of entry. *Id.* (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)).

The Executive Branch has statutory parole discretion to allow into the United States applicants for admission instead of holding them in detention. 8 U.S.C. § 1182(d)(5)(A). Parole may be granted “under such conditions as [the DHS Secretary] may prescribe” and “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” *Id.* Parole “shall not be regarded as an admission of the alien.” *Id.* And the DHS Secretary may, in her discretion, terminate any grant of parole and return the noncitizen “to the custody from which he was paroled.” *Id.*

A grant of parole terminates automatically, without written notice, (a) when the noncitizen departs the United States, or (b) “if not departed, at the expiration of the time for which parole was authorized.” 8 C.F.R. § 212.5(e)(1). In all other cases, parole “shall be terminated upon written notice to the alien.” *Id.* at § 212.5(e)(2). When parole is

terminated, the previously paroled alien's "case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." 8 U.S.C. § 1182(d)(5)(A). A "charging document," e.g., a Form I-860, constitutes written notice of termination of parole. 8 C.F.R. §§ 212.5(e)(2); 244.1; *see also United States v. Martinez-Castillo*, 2023 WL 4764025, *2 (S.D.N.Y. July 26, 2023) (Form I-860, "Notice and Order of Expedited Removal," is the official charging document in an expedited removal).

When previously granted parole is terminated, "the alien shall forthwith return or be returned to the custody from which he was paroled." 8 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. § 212.5(e)(2)(i) (providing that when parole granted to an alien is terminated "he or she shall be restored to the status that he or she had at the time of parole"); *Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (holding that, despite nine years of physical presence on parole, a foreign national "was still in theory of law at the boundary line and had gained no foothold in the United States").⁶

Removal

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), replacing much of the INA with a new and "comprehensive scheme for determining the classification of . . . aliens," *Camins v.*

⁶ Likewise, the fact that Petitioner worked and lived in the United States for over two years did not change her status as an "applicant for admission" deemed inadmissible upon arrival. "An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible." 8 U.S.C. § 1182(a)(6). Mejia's arrival in the United States at a time and place other than designated by the Attorney General made her inadmissible and an "applicant for admission." *See* Ex. A at p. 2.

Gonzales, 500 F.3d 872, 879 (9th Cir. 2007), including expedited removal. Prior to the IIRIRA, federal law “established two types of proceedings in which aliens can be denied the hospitality of the United States: deportation hearings and exclusion hearings.” *Vartelas v. Holder*, 566 U.S. 257, 261 (2012) (quoting *Landon v. Plasencia*, 459 U.S. 21, 25 (1982)). Under this setup, “non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who presented themselves at a port of entry for inspection were subjected to more summary exclusion proceedings.” *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010). Congress passed the “IIRIRA [to] address[] this anomaly by,” eliminating the concept of “entry” and exclusion and deportation proceedings, while creating instead a uniform “removal” procedure. *Id.*; see also *Vartelas*, 566 U.S. at 261–62. Removability now turns on whether a foreign national is admissible or has been “admitted” at a port of entry. Foreign nationals arriving in the United States or present in the United States without having been admitted are now “applicants for admission.” 8 U.S.C. § 1225(a)(1).

The IIRIRA preserved some elements of the former distinction between exclusion and deportation, including through the statutory enactment of expedited removal proceedings, which ensures that the Executive Branch can both “expedite removal of aliens lacking a legal basis to remain in the United States,” *Kucana v. Holder*, 558 U.S. 233, 249 (2010); see also S. Rep. No. 104-249 (1996), and deter individuals from exposing themselves to the dangers associated with illegal immigration, H.R. Rep. No. 104-469, pt. 1, at 117 (1996). “Hence, the pivotal factor in determining” what sort of proceeding a

foreign national is entitled to “will be whether or not the alien has been lawfully admitted.” *Id.* at 225. Congress thus conferred sizable authority to Executive Branch officers while limiting judicial review to “expedite the removal from the United States of aliens who indisputably have no authorization to be admitted to the United States, while providing an opportunity for such an alien who claims asylum to have the merits of his . . . claim promptly assessed[.]” H.R. Rep. No. 104-828, at 209–10 (1996).

The amended INA thus precludes judicial review over challenges to expedited removal orders issued pursuant to 8 U.S.C. § 1225(b)(1). *See* 8 U.S.C. § 1252(a)(2)(A). It provides, without exception, that “no court shall have jurisdiction to review . . . the application of [8 U.S.C. § 1225(b)(1)] to individual aliens, including the determination made under section 1225(b)(1)(B) of this title.” 8 U.S.C. § 1252(a)(2)(A)(iii).⁷ Two groups of foreign nationals are subject to expedited removal: (1) those arriving in the United States, 8 U.S.C. § 1225(b)(1)(A)(i); and (2) those designated by the Secretary of Homeland Security within certain outer statutory limits, *id.* (“an alien . . . described in clause (iii)”). *See* 8 U.S.C. § 1225(b)(1)(A)(i), (iii). The statute limits designation of the latter group as follows:

An alien . . . who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been

⁷ In three other numbered paragraphs, the INA provides for no judicial review, “except as provided in subsection (e).” 8 U.S.C. §§ 1252(a)(2)(A)(i), (ii), (iv). The statute then provides – “in subsection (e)” – for review in habeas corpus of three discrete questions. 8 U.S.C. § 1252(e)(2). Specifically, such review is available, “but shall be limited to determinations of – (A) whether the petitioner is an alien, (B) whether the petitioner was ordered removed under such section, and (C) whether the petitioner can prove” that they have been lawfully admitted as a lawful permanent resident, asylee, or refugee. 8 U.S.C. § 1252(e)(2).

physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.⁸

8 U.S.C. § 1225(b)(1)(A)(iii)(II). Thus, foreign nationals in either the first group (arriving aliens) or second group (designated aliens) can be removed through expedited removal if they are removable on either of two grounds of inadmissibility, namely, on the basis of fraud, 8 U.S.C. § 1182(a)(6)(C), or a lack of necessary documents, 8 U.S.C. § 1182(a)(7). 8 U.S.C. § 1225(b)(1)(A)(i).

The most recent designation of foreign nationals under 8 U.S.C. § 1225(b)(1)(A)(iii) occurred on January 24, 2025, following Executive Order 14159, *Protecting the American People from Invasion*, 90 Fed. Reg. 8443 (Jan. 20, 2025). The Acting Secretary of Homeland Security published a *Federal Register* notice restoring the scope of expedited removal to “the fullest extent authorized by Congress.” *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025). The notice enabled DHS “to place in expedited removal, with limited exceptions, aliens determined to be inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown, to the satisfaction of an immigration officer, that they have been physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility,” who were not covered by previous designations. *Id.*

⁸ The statute explicitly excludes foreign nationals “described in subparagraph (F),” which is someone “who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry.” 8 U.S.C. § 1225(b)(1)(A)(iii)(II), (F). But the United States has diplomatic relations with Colombia and Mejia does not claim to have arrived by aircraft at any port of entry.

at 8139–40. The notice explained that this action aimed to “enhance national security and public safety – while reducing government costs – by facilitating prompt immigration determinations” and would “enable DHS to address more effectively and efficiently the large volume of aliens who are present in the United States unlawfully . . . and ensure the prompt removal from the United States of those not entitled to enter, remain, or be provided relief or protection from removal.” *Id.* at 8139.

The United States may, therefore, place aliens in either expedited removal proceedings under 8 U.S.C. § 1225(b)(1) or full removal proceedings under 8 U.S.C. § 1229a. *Matter of M-S-*, 27 I&N Dec. 509, 510 (A.G. 2019). If an immigration officer determines that an alien arriving in the United States is inadmissible under Section 1182(a)(7), “the officer shall order the alien removed from the United States without further hearing or review” unless the alien claims asylum. 8 U.S.C. § 1225(b)(1)(A)(i). For those placed in expedited removal proceedings who are then referred to an immigration judge for consideration of their asylum application, 8 U.S.C. § 1225(b)(1)(B)(ii) requires detention until the final adjudication of the asylum application. *See Dorval v. Barr*, 414 F. Supp 3d 386, 393 (W.D.N.Y. 2019) (citing *Matter of M-S-*, 27 I.&N. Dec. 509 (A.G. April 16, 2019); *see also Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). Detained aliens who were originally placed in expedited proceedings and then transferred to full proceedings remain ineligible for bond, whether they are arriving at the border or apprehended in the United States. *Id.*⁹

⁹ The only exception permitting release is the discretionary parole authority provided by 8 U.S.C. § 1182(d)(5)(A). *See also Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018).

ARGUMENT

Petitioner bears the burden to show that her detention is unlawful. *Freeman v. Pullen*, 658 F. Supp. 3d 53, 58 (D. Conn. 2023) (quoting *McDonald v. Feeley*, 535 F. Supp. 3d 128, 135 (W.D.N.Y. 2021)). She has not met her burden.

I. Petitioner is an Applicant for Admission who is Seeking Asylum, so she is Subject to Detention Under 8 U.S.C. § 1225(b).

Petitioner is an applicant for admission. “An ‘applicant for admission’ is defined, in relevant part, as an alien ‘who arrives in the United States whether or not at a designated port of arrival.’” *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA May 15, 2025) (quoting 8 U.S.C. § 1225(a)(1)). Petitioner, who entered the country without any authorization and was apprehended near the border and determined to be inadmissible, is treated as an applicant for admission under § 1225. *Thuraissigiam*, 591 U.S. 103, 140. The parole provided to Petitioner under 8 U.S.C. § 1182(d)(5) confirms her status as an applicant for admission. *Iredia v. U.S. Att’y Gen.*, 25 F.4th 193, 196 (3rd Cir. 2022).

DHS is authorized to place applicants for admission in expedited removal proceedings under § 1225(b) or full removal proceedings under § 1229a. *Matter of Q. Li*, 29 I&N Dec. at 68. But regardless of the type of removal proceedings in which an applicant for admission who is seeking asylum is placed, she is subject to detention until the proceedings have concluded. *Id.* Petitioner was subject to detention when she was initially placed in expedited removal proceedings and seeking asylum; and she is subject to detention now that she has been provided an NTA and is still seeking asylum.

The only avenue for Petitioner to obtain release from detention is through another grant of discretionary parole under § 1182(d)(5). *Matter of Q. Li*, 29 I&N Dec. at 69.

II. Petitioner's Detention for Expedited Removal was Appropriate

Petitioner repeatedly has claimed that she is “legally” or “lawfully” in the United States. *See, ex.*, Pet. Brf. at PageID # 39-40. That is imprecise language. Mejia’s presence in the United States was known since shortly after she unlawfully crossed the border. She was and is an applicant for admission seeking asylum. To the extent she was seeking asylum and had been paroled, she was permitted limited privileges; however, the grant of parole, and its subsequent expiration, did not change her original status as an applicant for admission.

As noted above, Section 1225(b) applies primarily to “applicants for admission,” such as Petitioner. Under § 1225(b), “applicants for admission” claiming a credible fear of persecution under § 1225(b)(1) “shall be detained for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii).

Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded. Section 1225(b)(1) aliens are detained for “further consideration of the application for asylum,” and § 1225(b)(2) aliens are in turn detained for “[removal] proceeding[s].” Once those proceedings end, detention under § 1225(b) must end as well. Until that point, however, nothing in the statutory text imposes any limit on the length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.

Jennings, 583 U.S. at 297.

Petitioner came to the Indianapolis ICE office in July 2025 for an evaluation regarding the alternative to detention she had previously been afforded. She informed that her minor daughter was with her daughter's biological father in New York. At that point, any privilege of receiving an alternative to detention ended and she was detained for a determination of her asylum claim and expedited removal. As an applicant for admission seeking asylum and subject to expedited removal, she was appropriately detained. *See* DN 6-2 at PageID # 27; *see also* Ex. D I-867A, Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act.

Mejia's sole objection to her original detention appears to be her claim that she could not lawfully be subjected to expedited removal because "she had continuously resided in the United States for two years." Pet. Brf. at PageID # 39, 45. Conspicuously, nowhere in her brief does she address the mandate of detention for an alien seeking asylum as addressed in the United States' response to this Court's Show Cause Order. [Doc. 6, PageID. 21.] Because Petitioner was placed in expedited removal proceedings *and alternatively* because she is an applicant for admission seeking asylum, she was, and is, lawfully detained.

First, Petitioner's claims of continuous residence in the United States offers an incomplete picture for this Court. Mejia was deemed inadmissible in 2022. Ex. A. After her parole status ended in February 2023, she arranged via email with ICE to be re-evaluated. Petitioner stresses that she has been continuously within the United States for over two years but fails to address the fact that she was deemed inadmissible when she was captured in December 2022 having unlawfully crossed the border at a time and

place other than designated by the Attorney General without the required paperwork, a definition of “inadmissible.” Ex. A; *see also* 8 U.S.C. § 1182(a)(6)(A)(i).¹⁰ The prior determination of inadmissibility removes Petitioner from the statutory protection she seeks. 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (“ . . . physically present in the United States continuously for the 2-year period immediately *prior to the date of the determination of inadmissibility* . . .”) (emphasis added). Because Petitioner’s presence in the United States was subsequent to her determination of inadmissibility, she has no valid protest to ICE’s initiation of expedited removal proceedings.

Second, as an applicant for asylum, Mejia “shall be” detained. 8 U.S.C. § 1225(b)(1)(B)(ii).¹¹ The only exception to this mandate would be another determination of parole which is a discretionary decision Congress vested in the Attorney General. *See* 8 U.S.C. § 1182(d)(5)(A). Further, the Attorney General’s decision regarding humanitarian parole is generally non-reviewable. 8 U.S.C. § 1252(a)(2)(B)(ii) (stating that courts do not have jurisdiction to review discretionary decisions of the Attorney General regarding, *inter alia*, humanitarian parole). Because Petitioner is seeking asylum as an applicant for admission, detention was required.

¹⁰ Petitioner directs this Court only to the I-213 dated in July 2025 for a determination of inadmissibility, *see* Pet. Brf. at PageID # 45-47; however, as Exhibit “A” and other documents before the Court demonstrate her inadmissibility (unlawful entry) was originally decided in 2022 when Mejia was found within the borders of the United States, admitted to unlawful entry, and was detained.

¹¹ Mejia informs the Court that she was told she could remain in the United States until her asylum application was decided. Pet. Brf. at PageID # 46. Petitioner remains in the United States while her asylum application is determined. This case is about her lawful detention while navigating the asylum process.

III. Petitioner has Failed to Demonstrate any Violations of Due Process

Petitioner contends that ICE (1) failed to adequately inform her of her right to counsel or her rights under the expedited removal statute, and (2) failed to follow the procedure and protocol for expedited removal. Pet. Brf. at PageID # 49. In her Petition and briefing to this Court, Mejia fails to demonstrate how she was denied process. Rather, she merely reiterates her prior contention that expedited removal was not available to ICE because she had been in the country for two years after her original detention as an inadmissible alien and the expiration of her granted parole. Pet. Brf. at PageID # 49. She admits, however, that she applied for asylum which required adjudication. *Id.* As demonstrated above, the adjudication of that application alone requires detention.

Mejia cites to 8 C.F.R. § 235.3 as setting forth the process required for an expedited removal. Pet. Brf. PageID # 49 (FN 35). Section 235.3 informs that an alien who is determined to be inadmissible shall be ordered removed from the United States. When Mejia arrived at the ERO on July 28, 2025, she was addressed in her native language of Spanish. *See* Ex. D; Pet. Brf. at PageID # 39, 41. She was told she was inadmissible without the required paperwork for admission and informed that she could present information to counter that conclusion. Ex. D at p. 1. She was asked if she wanted a lawyer to which she responded in the affirmative and thereafter refused to answer any further questions or to sign. *Id.* She was detained, and her attorney initiated the current action three days later. Pet. at DN 1.

Mejia's due process arguments, Pet. at PageID # 6, are wrong because she never effected a lawful entry. *See Kaplan*, 267 U.S. at 230 (despite nine years of physical presence on parole, a foreign national "was still in theory of law at the boundary line and had gained no foothold in the United States"). Without any lawful entry, she has no more due process rights than what Congress chooses to provide her. *Thuraissigiam*, 591 at 114, 139–40; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative"); *see also Licea-Gomez v. Pilliod*, 193 F. Supp. 577, 580 (N.D. Ill. 1960) ("Nor does the fact that the excluded alien is paroled into the country . . . change [a foreign national's] status or enlarge his rights. He is still subject to the statutes governing exclusion and has no greater claim to due process than if he was held at the border."). Indeed, Congress was clear in the expedited removal statute that foreign nationals who have not effected a lawful entry, and have been here for a limited period of time, may still be subjected to expedited removal and "*shall* be detained" until DHS makes a final determination of their admissibility. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (emphasis added). That language bars habeas relief here. Nothing Petitioner has provided this Court to this point changes that analysis.

CONCLUSION

Petitioner's detention is authorized.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2025, I filed this document via CM/ECF,
which will automatically provide service to all counsel of record.

KYLE G. BUMGARNER
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/s/ Timothy D. Thompson
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