UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

IN RE SEARCH OF THE REAL PROPERTY & PREMISES OF HANNAH NATANSON	Case No. 1:26-sw-00054

PROPOSED BRIEF OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AS AMICUS CURIAE IN SUPPORT OF MOVANTS THE WASHINGTON POST AND HANNAH NATANSON

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INTRODUCTION

In January, the Department of Justice took the unprecedented step of raiding the home of *Washington Post* reporter Hannah Natanson, seizing electronic devices that contain her most sensitive work product alongside confidential communications with her sources. *See* Perry Stein & Jeremy Roebuck, *FBI Executes Search Warrant at Washington Post Reporter's Home*, Wash. Post (Jan. 14, 2026), https://wapo.st/4pFh6lw. Only a fraction of the information the Department seized is even imaginably relevant to its stated basis for that intrusion: the leak investigation of a government contractor who had already been identified, charged, and arrested. But federal agents nevertheless claim the right to rifle through their haul—freely examining unrelated newsgathering material and doing irreparable damage to the confidentiality on which effective reporting depends—without any judicial supervision. Sources whose communications with Natanson have nothing to do with the Department's probe, but whose relationship and conversations with a journalists may well anger the Administration, would face an obvious risk of exposure to those same officials. The clear consequence would be that "the free flow of newsworthy information would be restrained and the public's understanding of important issues and events would be hampered in ways inconsistent with a healthy republic." *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 287 (4th Cir. 2000).

The Magistrate Judge was right to intervene. The history of the Fourth Amendment is "largely a history of conflict between the Crown and the press," *Stanford v. Texas*, 379 U.S. 476, 482 (1965), and its safeguards must be applied with "scrupulous exactitude" when First Amendment freedoms—including the right to gather the news—are at stake, *Zurcher v. Stanford Daily*, 436 U.S. 547, 564 (1978) (citation omitted). Before this seizure, not once since the nation's founding had federal agents invaded a journalist's home in pursuit of alleged national

security secrets. *See* Adam Liptak, *Search of Reporter's Home Tests Law with Roots in a Campus Paper's Suit*, N.Y. Times (Jan. 19, 2026), https://perma.cc/4MNA-HFDL; *see also Federal Cases Involving Unauthorized Disclosures to the News Media, 1778 to the Present*, Reps. Comm. for Freedom of the Press (last updated Dec. 8, 2019), https://perma.cc/P482-CBT9. But if the government's objections to the Magistrate Judge's order were credited, investigators—both those who occupy the Department today and those who exercise those powers in the future—will face an obvious temptation to deploy the warrant process against whichever news organization or reporter has angered officials that day of the week. And that risk would stretch well beyond this case, beyond the *Post* in particular, and beyond the national-security desk. That is, Natanson's beat does not just touch on national defense matters but extends to narrative enterprise reporting covering a wide breadth of topics related to the entire federal executive branch. *See* Hannah Natanson, *I Am the Post's 'Federal Government Whisperer.' It's Been Brutal.*, Wash. Post (Dec. 24, 2025), https://perma.cc/3JVZ-TNC7. In short, if the Natanson raid is allowed to stand without, at a minimum, court supervision of the review, physical search warrants targeting journalists or newsrooms could become a routine tool in leak investigations.

In addition to the grave First and Fourth Amendment dangers that result would pose—well canvassed by Movants and addressed in the Reporters Committee's brief before the Magistrate Judge—amicus writes to emphasize that the government's new interpretation of the Privacy Protection Act would all but repeal the statute's protections for journalists, with especially dramatic consequences for vital national security reporting.

For the reasons given herein, the Reporters Committee urges this Court to overrule the government's objections to the Magistrate Judge's order.

ARGUMENT

I. Any warrant for a journalist's records—to say nothing of a raid of a private home—poses an exceptional risk to press freedom and requires the closest judicial scrutiny.

Since the Founding, this nation's traditions have recognized that the confidentiality of a reporter's work and sources sits at the heart of press freedom. *See McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 361 (1995) (Thomas, J., concurring in the judgment) (emphasizing "the extent to which anonymity and the freedom of the press were intertwined in the early American mind" dating back to the 1735 trial of John Peter Zenger). After all, it was as true in the eighteenth century as it is today that "[f]orcing reporters to divulge such confidences"—exposing sources to the risk of discipline, a lost job, legal consequences, or threat of physical harm—"would dam the flow to the press, and through it to the people, of the most valuable sort of information: not the press release, not the handout, but the firsthand story based on the candid talk of a primary news source." Alexander M. Bickel, *The Morality of Consent* 84 (1975). When a seizure is made pursuant to a warrant, for that matter, damage to the newsgathering process cuts even deeper than a subpoena. Where a subpoena can only command the production of material genuinely relevant to the government's needs (and only after an opportunity to test its breadth before a court), the execution of a warrant risks affording officials a chance "to rifle through many other papers—potentially filled with the most intimate details of a person's thoughts and life—before they find the specific information they are seeking," *Carpenter v. United States*, 585 U.S. 296, 370 (2018) (Alito, J., dissenting), gratuitously exposing unrelated sources and lines of reporting to the prying eyes of the government.

For just those reasons, "[h]istorically the struggle for freedom of speech and press in England was bound up with the issue of the scope of the search and seizure power," *Marcus v. Search Warrants*, 367 U.S. 717, 724 (1961), and the Crown's practice of using sweeping

warrants to seize the papers of dissident printers was among the abuses that inspired the design of the Constitution, *id.* at 729. As Lord Camden objected in *Entick v. Carrington*, a case "undoubtedly familiar" to "every American statesman," *Boyd v. United States*, 116 U.S. 616, 626 (1886), *overruled on other grounds*, *Warden v. Hayden*, 387 U.S. 294 (1967), when the King's messengers invaded a publisher's home, "[h]is house is rifled; his most valuable secrets are taken out of his possession, before the paper for which he is charged is found to be criminal by any competent jurisdiction," 19 How. St. Tr. 1029, 1064 (C.P. 1765). Or as an (anonymous) pamphleteer well known to the Founders put the point in even stronger language, "where there is even a charge against one particular paper, to seize all, of every kind, is extravagant, unreasonable and inquisitorial." *Marcus*, 367 U.S. at 729 n.22 (quoting Father of Candor, A Letter Concerning Libels, Warrants, and the Seizure of Papers 48 (2d ed. 1764, J. Almon)).

No wonder, then, that warrants for a journalist's papers—to say nothing of a raid on a reporter's residence—have been exceptionally rare throughout this country's history. As one congressional report observed, because "the right to search for and seize private papers [was] unknown to the common law," *Commonwealth v. Dana*, 43 Mass. (2 Met.) 329, 334 (1841), "a separate need to protect press and innocent third parties did not arise" until the Supreme Court first authorized searches for "mere evidence" in *Warden v. Hayden* in 1967. S. Rep. No. 96-874, at 6–7 (1980), *as reprinted in* 1980 U.S.C.C.A.N. 3950, 3953. As a result, when the Supreme Court first addressed a warrant for journalistic work product in *Zurcher*, 436 U.S. at 547, the incident was "unprecedented." Br. for Amici Curiae Reps. Comm. for Freedom of the Press et al. at 10–11, *Zurcher v. Stanford Daily*, 436 U.S. 547 (1978) (Nos. 76-1484, 76-1600), 1977 WL 189749 (emphasizing "the absence of any reported case before this one" involving a newsroom search like the one at issue). And as the Justice Department testified when Congress was

considering the Privacy Protection Act of 1980 ("PPA"), in almost 200 years there had been "no recorded problems with regard to Federal searches of third parties for documentary materials" and "only a few with regard to States." *Privacy Protection Act: Hearing before the S. Comm. on the Judiciary on S. 115, S. 1790, and S. 1816*, 96th Cong. 33 (1980), https://perma.cc/V5A8-LXM2 (testimony of Philip Heymann, Assistant Att'y Gen., Crim. Div., U.S. Dep't of Justice) (hereinafter "Heymann Testimony").

Federal leak investigations are no exception to that tradition. As late as 1980, there was "no past history of federal searches of the media based on [the Espionage Act] or any other federal laws." S. Rep. No. 96-874, at 11, *as reprinted in* 1980 U.S.C.C.A.N. 3950, 3958. When the Obama Administration obtained a search warrant for then-Fox News reporter James Rosen's email in connection with a leak investigation, it "mark[ed] the first time the government ha[d] gone to court to portray news gathering as espionage," Ken Dilanian, *FBI Spied on Fox News Reporter, Accused Him of Crime*, L.A. Times (May 20, 2013), https://perma.cc/P33S-CUDR, a decision that Attorney General Eric Holder described as the greatest regret of his tenure, *see* David A. Graham, *Does Eric Holder Want to Prosecute Journalists or Not?*, The Atlantic (Oct. 29, 2014), https://bit.ly/4jQnF3z. And the search of Natanson's residence, for its part, was "the first time that a reporter's home has been raided in connection with a national security leak case." Liptak, *supra*; *see also* Chris Young & Emily Vespa, *The FBI Search of a Washington Post Reporter's Home: What We Know and Why It Matters*, Reps. Comm. for Freedom of the Press (Jan. 16, 2026), https://perma.cc/2FUC-3S6F. Looking from 1789 through today, in other words, the intrusion here is genuinely unparalleled.

Federal law and the Justice Department's own regulations reflect the same understanding that warrants for journalists' records are—and should be—exceptional, even in national-security

leak investigations. After a slim majority of the Supreme Court declined to outlaw newsroom searches outright in *Stanford Daily*, Congress responded by passing the PPA of 1980 ("PPA"), which (as discussed in more detail below) generally bars searches—with or without a warrant—for the "work product materials" or "documentary materials" of journalists and others. 42 U.S.C. § 2000aa(a)–(b). And while the PPA's so-called 'suspect exception' exempts searches where "there is probable cause to believe that the person possessing such materials has committed or is committing the criminal offense to which the materials relate," including offenses that "consist[] of the receipt, possession, or communication of information relating to the national defense," *id.* § 2000aa(a)(1), (b)(1), Congress contemplated that that exception would have little if any relevance to the press in particular, because "the suspect exception to the ban on searches would apply only if there was an allegation of an intent to injure the United States or give advantage to a foreign power," S. Rep. No. 96-874, at 12, *as reprinted in* 1980 U.S.C.C.A.N. 3950, 3958. The Justice Department, which drafted the legislation, shared that understanding. *See id.*.

Understandably, then, the Justice Department's own regulations reflect the same view that obtaining a warrant for a journalist's records is an extreme step. The Department has long maintained regulations restricting the circumstances under which federal agents can obtain the records of members of the news media—often referred to as the 'news media guidelines.' *See generally* 28 C.F.R. § 50.10. After the Rosen case described above, Attorney General Holder revised those policies to restrict still further the availability and use of search warrants. *See* U.S. Dep't of Justice, Report on Review of News Media Policies 3 (2013), https://perma.cc/S8CW-9MDY. And in their current form, those guidelines make express that "[t]he Department views . . . search warrants to seek information from, or records of, non-consenting members of the news

media as extraordinary measures," 28 C.F.R. § 50.10 (a)(3), and they require—among other safeguards—the personal authorization of the Attorney General, *see id.* § 50.10(d)(1).

As history and practice both make clear, then, the warrant here is an extraordinary outlier. But if it were to become the norm—if the daily work of all journalists covering the federal government were enough to earn them an early morning raid, the seizure of their devices, and a raft of federal agents picking through their work—the damage done to the freedom of the press would be profound, to the detriment of the free flow of information to the public.

II. Allowing the government to seize and search freely through a journalist's work product, without judicial supervision, would violate the Privacy Protection Act.

The Magistrate Judge correctly remedied the harm done, before the government's review of sensitive work product and confidential source communications could irreparably injure the integrity of the newsgathering process. Under Federal Rule of Criminal Procedure 41(g), "[a] person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return," Fed. R. Crim. P. 41(g), and while the Magistrate Judge's order emphasized the First Amendment implications of the government's intrusion, the threat of federal agents searching freely through a journalist's papers is also the quintessential injury that Congress adopted the PPA to address. In arguing otherwise, the government advances a reading of the PPA that would eviscerate the statute's protections for a free press, with a grave chilling effect on national-security reporting in particular.

A. The PPA prohibits combing wholesale through a reporter's records in search of the small portion of files allegedly responsive to a warrant.

The PPA generally makes it "unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize any work product materials possessed by a person reasonably believed to have a purpose to

disseminate to the public a newspaper . . . or other similar form of public communication" subject to narrowly defined exceptions. 42 U.S.C. § 2000aa(a); *see also id.* § 2000aa(b) (same with respect to "documentary materials"). The government concedes in this case that "the seized material includes more than just evidence and almost certainly includes PPA-protected materials." Objections to Magistrate Judge's Mem. Opinion & Order on the Mot. for Return of Property at 30 (ECF No. 74) ("Gov't's Objections"). In the teeth of that admission, the government's case that unsupervised review of Movants' sensitive newsgathering material would comply with the statute is meritless.

The government urges first that it was permitted to seize and can search Movants' work product and documentary materials because they contain what the department deems "contraband or the fruits of a crime"—claimed national security secrets—that can only be identified by rummaging through the haul in its entirety. *Id.* at 29 (quoting 42 U.S.C. § 2000aa-7(a)).[1] Since that much would be true in virtually any national-security leak investigation, that interpretation would license the routine and wholesale seizure of electronic devices from reporters who cover the most urgent questions of federal policy. *Cf. N.Y. Times Co. v. United States*, 403 U.S. 713, 719 (1971) (Black, J., concurring) ("The guarding of military and diplomatic secrets at the expense of informed representative government provides no real

[1] A threshold difficulty with that argument is that the warrant in fact seeks "evidence of violations of 18 U.S.C. § 793," in addition to contraband and fruits or instrumentalities. ECF No. 9-5 (Att. B) at 5. The government seems to think the two are coextensive, *see* Gov't's Objections at 29, but never explains why that would be the case; not all evidence of a violation of 18 U.S.C. § 793 will, itself, consist of national defense information and the warrant application clearly seeks "mere" evidence, including, for instance, communications with the defendant contractor. To the extent the government states it seeks mere evidence where no exception to the PPA applies, it admits a violation of the statute. *See Madaio v. FBI*, CV-06-BE-00904, 2008 WL 11392887, at *6 (N.D. Ala. Mar. 31, 2008) ("The Act was intended to discourage law enforcement officers from targeting publishers simply because they gathered 'mere evidence' of crime.").

security for our Republic."). But the statute's text, structure, and purpose cannot support that result. For one, it would make nonsense of the PPA's carefully drawn suspect exception redundant. Under that provision, the government may search or seize covered materials where the government can demonstrate "probable cause to believe that the person possessing such materials has committed or is committing the criminal offense to which the materials relate," unless the offense consists of the receipt or communication of the materials themselves, *unless*—in a caveat to the caveat—"the offense consists of the receipt, possession, or communication of information relating to the national defense," among other enumerated offenses 42 U.S.C. § 2000aa(a)(1). But if the government could simply seize the same information as contraband, without a showing that probable cause exists to believe the possessor of the material has committed a relevant offense, Congress's elaborate sequence of nested exemptions would all be pointless.

It should be no surprise, of course, that the government would prefer not to make such a probable cause showing. "Any warrant devoid of support for an element lacks probable cause," including the intent necessary to commit the offense. *Bonnell v. Beach*, 408 F. Supp. 3d 733, 753 (E.D. Va. 2019). And as the statute makes clear, the suspect exception requires not just probable cause to believe that evidence of someone else's offense will be found in the place to be searched—as the Fourth Amendment would—but "probable cause to believe *that the person possessing such materials* has committed or is committing the criminal offense to which the materials relate." 42 U.S.C. § 2000aa (a)(1), (b)(1) (emphasis added). The Senate report that accompanied the PPA is explicit that, as lawmakers and the Department of Justice both understood, the need to demonstrate *intent* to make that probable cause showing would prevent investigators from satisfying the suspect exception where a journalist is alleged to have received

or transmitted national defense information. *See* S. Rep. No. 96-874, at 12, *as reprinted in* 1980 U.S.C.C.A.N. 3950, 3958–59 ("[T]o the extent that S. 1790 provides a suspect exception related to the national security statutes which are stated, it is the intent of the Committee that with regard to 18 U.S.C. § 793 the suspect exception to the ban on searches would apply only if there was an allegation of an intent to injure the United States or give advantage to a foreign power."); *see also id.* (noting that the Justice Department, which drafted the PPA, acquiesced in that reading and had "never employed a search warrant procedure in such cases"); Heymann Testimony, *supra* (noting that the proposal that became the PPA was "drafted by the Justice Department" itself). In other words, pursuant to Congress's clearly stated objective, the suspect exception should bar even searches for offenses related to national defense information unless the government can put forward evidence that a journalist acted with the requisite state of mind. Here, though, the government has advanced no argument that Natanson and the *Washington Post* acted with anything but "the purpose that the Founding Fathers saw so clearly" for the press—to "reveal[] the workings of government" and "inform the people." *N.Y. Times Co.*, 403 U.S. at 717 (Black, J., concurring). And no wonder, then, that the government prefers to bypass the requirements of the suspect-exception entirely.

To bolster its position, the government relies on the rationale that it would be too hard "to separate the offending materials from other 'innocent material' on the computer" without rummaging through the whole lot. Govt's Objections at 30 (quoting *Guest v. Leis*, 255 F.3d 325, 341–42 (6th Cir. 2001)). In other words, the government would all but repeal the PPA as applied in practice to modern digital devices. But *Guest* is not only unpersuasive on its own terms, it also provides no support for the government's position. For one, the court in *Guest* frankly acknowledged that its interpretation was an atextual one, intended to address what it saw as

challenges "unforeseen by the drafters." 255 F.3d at 341. And its conclusion clashes with the statute's plain language twice over. Where Congress adopted a technology-neutral definition of covered materials—embracing all "materials upon which information is recorded," 42 U.S.C. § 2000aa-7(a) (documentary materials) and all materials maintained for certain communicative purpose regardless of format, *see id.* § 2000aa-7(b) (work product materials)—the *Guest* reading would create a two-tiered system, in which material recorded on an analog medium receives the full benefit of the PPA's safeguards while material recorded on a digital medium effectively receives none. What's more, the statutory text extends not just to particular "information" or individual files but also identifies types of *containers*—"electronically recorded cards, tapes, or discs"—capable of storing more than one file as nonexhaustive illustrations of the statute's scope. *Id*. Put differently, the issue of containers on which covered and uncovered materials could potentially be commingled was not, in fact, unforeseen; Congress simply answered the question differently than today's Justice Department would like. And where the text is clear, this Court's role "is to enforce it according to its terms." *Lynch v. Jackson*, 853 F.3d 116, 121 (4th Cir. 2017) (internal citation omitted).

Even crediting *Guest*'s rationale, though, it would not extend to this case. The opinion speaks only to materials "commingled on a *criminal suspect*'s computer," *Guest*, 255 F.3d at 342 (emphasis added), acknowledging that another court to address the search of an innocent third-party instead reached the opposite result, *see id.* at 342 n.12 (citing *Steve Jackson Games, Inc. v. U.S. Secret Service*, 816 F. Supp. 432 (W.D. Tex. 1993)). What's more, *Guest* declined to find liability for "*seizure* of the PPA-protected materials" commingled on a computer, but "emphasize[d] . . . that police may not then *search* the PPA-protected materials that were seized incidentally to the criminal evidence." 255 F.3d at 342 (emphases added). That is, of course,

exactly what the government seeks permission to do here. But the PPA bars both searches and seizures, and even if the reasoning of *Guest* would excuse the initial device seizure, any review or retention of unrelated work product and documentary material is a separate search or seizure that requires independent justification under the statute. *See United States v. Nasher-Alneam*, 399 F. Supp. 3d 579, 591–94 (S.D. W. Va. 2019) (separate Fourth Amendment event "when law enforcement personnel obtain a warrant to search for a specific crime but later, for whatever reason, seek to broaden their scope to search for evidence of another crime"); *United States v. Comey*, 809 F. Supp. 3d 396, 406, n.6 (E.D. Va. 2025) (emphasizing that "continued access to materials that are non-responsive to a search warrant may violate the Fourth Amendment"). The government, though, does not suggest that it can satisfy any relevant statutory exception as to the materials unrelated to its investigation. *See Reyes v. City of Austin*, No. 1:21-cv-992, 2025 WL 1931954, at *8 (W.D. Tex. June 6, 2025) ("[T]he PPA requires not only probable cause, but probable cause *related* to the materials at issue, an additional element for the [government] to prove."); *cf. In re Search Warrant Issued June 13, 2019*, 942 F.3d 159, 172 & n.14 (4th Cir. 2019) (district court erred in approving filter team to search through law firm's files where "less than one percent of the seized emails" were likely to be responsive to the search warrant). Text, context, and purpose therefore point in the same direction: The government's unrestrained rummaging through Movants' newsgathering material—the very harm that Congress designed the PPA to prevent—would violate the statute.

B. Federal courts have power to prevent violations of the PPA.

Finally, the government maintains that federal courts are powerless to prevent violations of the PPA before they occur and are limited to offering journalists damages after the fact as a consolation prize. *See* Gov't's Objections at 30. But the statutory text says no such thing.

The provision the government selectively quotes for the proposition that damages are the "exclusive" remedy for violations of the PPA in fact states that "[t]he remedy provided by subsection (a)(1) against the United States, a State, or any other governmental unit is exclusive of any other civil action or proceeding for conduct constituting a violation of this chapter, *against the officer or employee whose violation gave rise to the claim*." 42 U.S.C. § 2000aa-6(d) (emphasis added). In other words, a plaintiff may not recover twice—from both an entity defendant and an individual defendant—for the same violation. *See* S. Rep. No. 96-874, at 15 (same). The provision has nothing to say about whether a plaintiff may obtain equitable relief in addition to damages, and where the statute intends to preclude an alternative remedy, it does so expressly. *See* 42 U.S.C. § 2000aa-6(e) (providing that a violation does not provide grounds for suppression). What's more, the statute's structure clearly contemplates that federal courts have other tools available to them to prevent violations. When, for instance, the government attempts to invoke the provision authorizing warrants where an individual has failed to respond to a subpoena, the statute provides that "the person possessing the materials shall be afforded adequate opportunity to submit an affidavit setting forth the basis for any contention that the materials sought are not subject to seizure." *Id.* § 2000aa(c). That section would be useless if the court, having heard from the parties, lacked authority to prevent a search from going forward.

That understanding is likewise consistent with the law of equity. "[I]t is well established that Rule 41(g) proceedings are equitable in nature," *United States v. Wright*, 49 F.4th 1221, 1227 (9th Cir. 2022), and the Supreme Court has made clear that the federal courts' equitable jurisdiction has traditionally authorized suits to restrain impending "violations of federal law by federal officials," *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015), unless the statutory context "establish[es] Congress's intent to foreclose equitable relief," *id.* at 328

(internal quotation marks omitted). Here, as already discussed above, no such intent appears. On the contrary, the PPA would provide no meaningful protection for the confidentiality of journalists' newsgathering material if it were limited to *ex post* remedies. *See In re Search Warrant Issued June 13, 2019*, 942 F.3d 159, 175 (4th Cir. 2019) (emphasizing, in the context of attorney-client privilege, that the harm of reviewing seized communications is "plainly irreparable" and "cannot be undone" if *ex ante* relief is not granted). That cannot be the result Congress intended in creating this statutory scheme.

* * *

In each respect, the PPA reinforces what the First and Fourth Amendments likewise make clear: national-security leak investigation or no, the government cannot seize a reporter's most sensitive records and source communications *en masse* and sift through them freely. To hold otherwise would eviscerate the Act's protections and make routine the same searches that Congress believed it had strictly limited to the most extraordinary of cases, of which this isn't one. Amicus respectfully urges that the Government's objections be overruled.

CONCLUSION

For the reasons given herein, amicus respectfully urges the Court to overrule the government's objections to the Magistrate Judge's order.

Dated: March 27, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Mara Gassmann, hereby certify that on March 27, 2026, I filed the foregoing memorandum of law using the Court's CM/ECF system, which effected service on all parties.

Respectfully submitted,

/s/ Mara Gassmann

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