UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

COMMODITY FUTURES TRADING COMMISSION, Plaintiff, v. MICHAEL THOMAS NOWAK, and GREGG FRANCIS SMITH, Defendants.	Case No. 19-cv-6163 Honorable Robert M. Dow, Jr.

BRIEF IN SUPPORT OF THE MOTION OF THE UNITED STATES TO INTERVENE AND TO STAY

I. INTRODUCTION

The United States of America, by Robert Zink, Chief of the Fraud Section of the Criminal Division of the U.S. Department of Justice ("DOJ"), respectfully (i) seeks leave to intervene in this action under Federal Rule of Civil Procedure 24 ("Rule 24"); and (ii) moves for a stay of this action through the conclusion of the parallel criminal prosecution pending in *United States v. Smith, et al.*, Case No. 19 CR 669 (N.D. Ill.).

The criminal case includes both defendants to this civil case—Michael Thomas Nowak and Gregg Francis Smith—and substantially the same conduct, events, and time period. The government respectfully suggests that the requested stay would benefit this Court and all parties by minimizing redundant litigation, narrowing the scope of discovery and issues to be adjudicated in this case, and relieving Nowak and Smith of the choice of having to choose between potentially invoking their rights against self-incrimination in this civil case (which invocation could be used against

them in this case) or testifying in this case (which testimony could be used against them in the criminal case). In addition, a stay is needed to preclude Nowak and Smith from impermissibly taking advantage of the civil discovery process to circumvent the limitations on criminal discovery that protect the integrity of criminal prosecutions, and to allow the defendants the ability to focus their resources on defending the pending criminal case. The proposed stay requested in this motion would be definite and reasonably limited in time—namely, the duration of the criminal proceedings—and would not prejudice any party to this litigation.

On October 25, 2019, the government conferred with counsel for defendants Nowak and Smith who each stated that they oppose the stay requested in this motion. The plaintiff in this action, the Commodity Futures Trading Commission ("CFTC"), does not oppose the stay requested in this motion.

BACKGROUND

On August 22, 2019, a grand jury in the United States District Court for the Northern District of Illinois, Eastern Division returned a 14-count sealed indictment (the "Indictment"), charging defendants Nowak and Smith, as well as a third individual, Christopher Jordan, with conspiracy to conduct or participate in an enterprise engaged in a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(d); conspiracy to commit price manipulation, bank fraud, wire fraud affecting a financial institution, commodities fraud, and spoofing, in violation of 18 U.S.C. § 371; bank fraud, in violation of 18 U.S.C. § 1344(1); and wire fraud affecting a financial institution, in violation of 18 U.S.C. § 1343. (Indictment ¶¶ 21, 44, 51, 54,

57, 59, 61, 63, 65 & 67, *United States v. Smith et al*, Case No. 19 CR 669, Dkt. No. 1 (N.D Ill. Aug. 22, 2019).) The Indictment also charged Nowak and Smith with attempted price manipulation, in violation of 7 U.S.C. § 13(a)(2); commodities fraud, in violation of 18 U.S.C. § 1348(1); and spoofing, in violation of 7 U.S.C. §§ 6c(a)(5)(C) and 13(a)(2). (*Id.* ¶¶ 51, 54, 69, 71, 73 & 75.) On September 16, 2019, Nowak and Smith were arrested, the Indictment was unsealed.

According to the Indictment, beginning in or around May 2008 and continuing until at least in or around August 2016, Nowak and Smith, together with their co-conspirators, placed orders to buy and sell precious metals futures contracts with the intent to cancel those orders before execution, including in an attempt to artificially affect prices and to profit by deceiving other market participants. (*Id.* ¶¶ 25, 44(e), 73, 75.) Specifically, the Indictment alleges, among other things, that Nowak and Smith placed one or more orders for precious metals futures contracts on one side of the market which, at the time Nowak and Smith placed the orders, they intended to cancel before execution. (*Id.* ¶ 25(b).) By placing these orders for precious metals futures contracts, Nowak and Smith created the false appearance of substantial supply or demand in order to fraudulently induce other market participants to react to their deceptive market information. (*Id.* ¶¶ 25(f)-(k), 63, 65.) This increased the likelihood that one or more of their opposite-side orders would be filled by other market participants, allowing Nowak and Smith, and their co-conspirators, to generate trading profits and avoid losses for themselves and other

members of the precious metals desk at "Bank A," the precious metals desk itself, and, ultimately, Bank A. (*Id.* ¶ 25(j).)

On September 16, 2019, the date Nowak and Smith were arrested, the CFTC filed this civil action (the "CFTC Complaint") against Nowak and Smith for acts and practices that violate Section 9(a)(2) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 13(a)(2)(2012), Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C)(2012), Section 6(c)(1) of the Act, 7 U.S.C. § 9(1)(2012), and Commission Regulation 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3)(2019), and Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), to enjoin Nowak and Smith's unlawful acts and practices and to compel their compliance with the Act and with CFTC regulations. (CFTC Complaint ¶¶ 2-5.) In addition, the CFTC seeks civil monetary penalties and other equitable relief, including disgorgement, as this Court deems necessary or appropriate. (*Id.* ¶ 5.)

The CFTC alleges that from at least 2008 through at least 2015 Nowak and Smith engaged in a "manipulative and deceptive acts and practices in the precious metals futures markets, which involved Defendants placing orders for and trading precious metals futures contracts on a registered entity" (including COMEX and NYMEX), and that Nowak and Smith "repeatedly engaged in these manipulative or deceptive acts and practices by 'spoofing' (bidding or offering with the intent to cancel the bid or offer before execution)." (*Id.* ¶ 1.) The CFTC Complaint alleges that by "placing thousands of orders with the intention to cancel them, Defendants sent false signals of increased buying or selling interest designed to trick market participants

into executing the orders Defendants wanted filled." and that Nowak and Smith "engaged in this conduct with the intent to manipulate market prices and create artificial prices, and thereby enable their orders to be filled sooner, at a better price, or in larger quantities than they otherwise would." (*Id.*)

The DOJ's Indictment and the CFTC Complaint arise out of substantially the same underlying conduct. For example, both the Indictment and CFTC Complaint allege that Nowak and Smith engaged in manipulative and deceptive trading activity in connection with precious metals futures contracts. (*Compare* Indictment ¶ 25 *with* CFTC Complaint ¶ 1, 40-48.) Both allege that Nowak and Smith placed orders for precious metals futures contracts that, at the time the orders were placed, they intended to cancel before execution. (*Compare* Indictment ¶¶ 25(b), 73, 75 *with* CFTC Complaint ¶ 1, 41, 52, 71.) And both allege that Nowak and Smith engaged in this scheme to trick other market participants by injecting false information regarding supply and demand into the precious metals futures contracts market so that Nowak and Smith could execute genuine orders at quantities, prices, and times that otherwise would not have been available but for Nowak and Smith's orders. (*Compare* Indictment ¶¶ 25(g) *with* CFTC Complaint ¶¶ 1, 39, 44-47.)

While arising out of the same substantive conduct, there are certain differences between the Indictment and CFTC Complaint, which include (i) the time period alleged in the CFTC Complaint (at least 2008 through at least 2015) and the time period alleged in the Indictment (May 2008 through March 2016), and (ii) the CFTC Complaint alleges two specific examples of Nowak's manipulative and deceptive

trading activity (*see* CFTC Complaint ¶¶ 53-60)[1] and three specific examples of Smith's manipulative and deceptive trading activity (*see id.* ¶¶ 72-83), which are not specifically identified in the Indictment (*see* Indictment ¶¶ 29-30). In addition, the Indictment includes allegations against a third individual, Christopher Jordan, who is not a defendant in this civil action. (*See id.* ¶ 17(c).) Finally, the Indictment contains allegations regarding certain conduct that are not referenced in the CFTC Complaint, such as allegations regarding (i) false statements Smith made to the CME (*see id.* ¶ 40), (ii) false and fraudulent representations to Bank A by Nowak and Smith when they signed annual compliance attestations (*see id.* ¶¶ 41-42, and (iii) allegations that Nowak and Smith, together with their co-conspirators, defrauded clients of Bank A who had bought or sold "barrier options," by trading in a manner that was calculated to push the price of the underlying assets away from the price point at which Bank A would lose money on the options and toward the price point at which Bank A would profit from the options (*see id.* ¶ 26).

No trial date has been set in either this civil action or in the criminal case. In this civil action, both Smith and Nowak have waived service of the summons and the CFTC Complaint. An initial status hearing in this civil action is scheduled for November 6, 2019. In the criminal case, U.S. District Court Judge Edmond E. Chang has been assigned to the case, and Nowak and Smith were arraigned before Judge

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[1] A third example of Nowak's manipulative and deceptive trading on March 3, 2014, at 8:02:17.997 a.m., however, is cited in both the CFTC Complaint (¶¶ 61-64) and Indictment (¶ 30(n)).

Chang on October 22, 2019. A trial date has not been set in the criminal case and the next status hearing is scheduled for December 5, 2019.

DISCUSSION

I. The DOJ Should Be Granted Leave to Intervene

Under Federal Rule of Civil Procedure 24(a)(2), a litigant may intervene *as of right* if it can satisfy four requirements: (i) the application to intervene must be timely; (ii) the applicant must have an interest in the subject matter of the action; (iii) the applicant must show that disposition of the action may impede the applicant's ability to protect that interest; and (iv) the applicant's interest must not be adequately represented by existing parties to the litigation. *Sec. Ins. Co. of Hartford v. Schipporeit, Inc.*, 69 F.3d 1377, 1380 (7th Cir. 1995); *SEC v. Salis*, No. 2:16-cv-231, 2016 WL 7239916, at *2 (N.D. Ind. Dec. 14, 2016). Alternatively, Rule 24(b)(1)(B) *permits* a timely applicant to intervene "when an applicant's claim or defense and the main action have a question of law or fact in common." *Id*. at 1381. The Northern District of Illinois has construed Rule 24 "liberally," resolving doubts "in favor of allowing intervention." *Michigan v. U.S. Army Corps of Engineers*, No. 10-CV-4457, 2010 WL 3324698, at *2 (N.D. Ill. Aug. 20, 2010). Here, the DOJ's intervention should be granted under either provision of Rule 24.

a. The DOJ Has the Right to Intervene

The DOJ satisfies all four requirements to intervene as of right in this action.

First, this motion is timely. The CFTC filed its civil complaint on September 16, 2019, and now, approximately six weeks later, the DOJ is moving to

intervene. *See Dave's Detailing, Inc. v. Catlin Ins. Co.*, No. 1:11-CV-1585-RLY-DKL, 2012 WL 5377880, at *2 (S.D. Ind. Oct. 31, 2012) (finding motion to intervene timely when filed less than four months after filing original complaint); *PAC for Middle Am. v. State Bd. of Elections*, 95 C 827, 1995 WL 571893, at *3-4 (N.D. Ill. Sept. 22, 1995) (finding motion to intervene timely when filed three months after filing of original complaint).

Second, the DOJ has a "discernible interest in intervening in order to prevent discovery in the civil case from being used to circumvent the more limited scope of discovery in the criminal matter." *SEC v. Chestman*, 861 F.2d 49, 49 (2d Cir. 1988) (affirming order permitting intervention by the government under either Rule 24(a) or (b)). That danger is heightened here given the significant overlap of factual allegations. When faced with such situations, "[c]ourts have almost universally permitted the United States to intervene in actions" because it "is well established that the United States Attorney may intervene in a federal civil action to seek a stay of discovery when there is a parallel criminal proceeding, which is anticipated or already underway that involves common questions of law or fact." *SEC v. Mersky*, No. 93-CV-5200, 1994 WL 22305, at *1 (E.D. Pa. Jan. 25, 1994) (citation and quotation omitted); *see also United States v. Michelle's Lounge*, No. 91 C 5783, 1992 WL 194652, at *5 (N.D. Ill. Aug. 6, 1992) ("Conducting civil discovery while the related criminal investigation is continuing would compromise that investigation."); *Marino v. Hegarty*, No. 86 C 6759, 1987 WL 9582, at *1 (N.D. Ill. Apr. 10, 1987) ("It

would be inappropriate to proceed with this [civil] case during the ongoing criminal investigation.").

Third, unless the DOJ intervenes and stays civil discovery, Nowak and/or Smith can obtain information in the civil action that the Federal Rules of Criminal Procedure would prohibit them from receiving in the criminal case. For example, some of the potential witnesses in the DOJ's criminal case could likely be witnesses for the CFTC in this civil action. Without a stay, Nowak and Smith will be able to use the civil discovery process to compel information from potential trial witnesses through depositions, interrogatories, and requests for admission, thereby jeopardizing the ongoing criminal prosecution. *See United States v. Phillips*, 580 F. Supp. 517, 520 (N.D. Ill. 1984) ("This abusive tactic is an improper circumvention of the restrictions of the criminal discovery rules."); *see also Campbell v. Eastland*, 307 F.2d 478, 487 (5th Cir. 1962) ("A litigant should not be allowed to make use of the liberal discovery procedures applicable to a civil suit as a dodge to avoid the restrictions on criminal discovery and thereby obtain documents he would not otherwise be entitled to for use in his criminal suit.")

Fourth, the CFTC is limited to civil, rather than criminal, enforcement of commodities fraud and manipulation laws, and therefore cannot adequately protect the DOJ's interest in the subject matter of this action. *See Bureering v. Urawas*, 167 F.R.D. 83, 86 (C.D. Cal. 1996) ("[T]he Government's prosecutorial and investigative interest is not adequately protected by any of the civil parties . . . . Clearly neither the plaintiff nor the defendants have this identical interest."); *cf. SEC v.*

Mutuals.com, Inc., No. 3:03-CV-2912, 2004 WL 1629929, at *2 (N.D. Tex. July 20, 2004) ("The SEC cannot adequately protect the government's interest because it does not have the same right to invoke criminal rules that the government has."); *SEC v. Downe*, No. 92-CV-4092, 1993 WL 22126, at *12 (S.D.N.Y. Jan. 26, 1993) (The government "is better equipped to explain its need for intervention in the instant case due to a parallel criminal investigation, rather than using the SEC as a conduit for such arrangements").

b. Alternatively, the DOJ Should Be Permitted to Intervene

The DOJ also satisfies the requirements for permissive intervention under Rule 24(b). As established above, the application is timely, both cases share common questions of fact, and intervention by DOJ would not prejudice any party. *See supra* 8-10.

II. A Stay Is Warranted

This Court has inherent authority to enter a stay in this civil action, deriving from the broader power inherent in every court "to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for the litigants." *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). Whether to grant a stay involves a balancing of various interests, including those of the civil litigants, but "administrative policy gives priority to the public interest in law enforcement," such that it is "necessary and wise that a trial judge should give substantial weight to [the public interest] in balancing the policy against the right of a civil litigant to a

reasonably prompt determination of his civil claims or liabilities." *Benevolence Int'l Found., Inc. v. Ashcroft*, 200 F. Supp. 2d 935, 941 (N.D. Ill. 2002) (quotation omitted).

District courts in the Seventh Circuit examine several factors to determine whether a stay of civil proceedings pending resolution of a parallel criminal matter is warranted, including the following: (i) whether the civil and criminal matters involve the same subject; (ii) whether the government is a party in both cases; (iii) the posture of the criminal proceeding; (iv) the effect on the public interest of granting or denying a stay; (v) the interest of the civil plaintiff in proceeding expeditiously and the potential prejudice the plaintiff may suffer from a delay; and (vi) the burden that any particular aspect of the civil case may impose on defendants if a stay is denied. *Chagolla v. City of Chicago*, 529 F. Supp. 2d 941, 945 (N.D. Ill. 2008). Each of these factors supports a stay in this case.

Same subject matter: There is significant overlap between the conduct alleged in the Indictment and CFTC Complaint with both alleging violations based on the very same conduct. For instance, both allege that Nowak and Smith engaged in manipulative and deceptive trading activity to mislead other market participants by injecting false and misleading information regarding the supply and demand into the market for precious metals futures contracts. The time periods for the alleged market manipulation substantially overlap—from at least 2008 through at least 2015 in the CFTC Complaint, and from in or about May 2008 through in or about August 2016 in the Indictment. Thus, "[t]he close relationship between the civil and criminal matters weighs in favor of a stay." *Chagolla*, 529 F. Supp. 2d at 946; *see also Cruz v. Cnty. of*

DuPage, No. 96 C 7170, 1997 WL 370194, at *2 (N.D. Ill. June 27, 1997) (finding a stay warranted even in circumstances where "there is only 'some overlap' between the two actions").

Whether the government is a party in both cases: "When both civil and criminal proceedings are brought by the government, there is a concern that the government may use the civil discovery process to obtain evidence for use in the criminal proceedings." *Salcedo*, 2010 WL 2721864, at *2. The DOJ is not seeking any such advantage here. To the contrary, the DOJ is seeking to stay this civil action, including the civil discovery process, precisely so that materials obtained through this process cannot be used by either party in the criminal proceedings. This factor supports a stay.

Posture of the criminal proceeding: The filing of criminal charges against a defendant weighs in favor of a stay of civil proceedings, even in the early stages of the criminal case. *See Chagolla*, 529 F. Supp.2d at 946, 948 (granting four-month stay of civil discovery even before an indictment had been returned and when criminal case was at a "very early stage"); *SEC v. Treadway*, No. 04 CIV.3464 VM JCF, 2005 WL 713826, at *3 (S.D.N.Y. Mar. 30, 2005) (finding a stay warranted "where, as here, formal criminal charges have been brought, there is a greater risk that limitations on criminal discovery will be circumvented by the liberal discovery permitted in civil litigation."). In the criminal case, the Indictment has been returned charging Nowak and Smith (and an additional co-defendant, Christopher Jordan), which support staying this civil action. *See Cruz*, No. 96 C 7170, 1997 WL 370194, at *3 (N.D. Ill.

Jun. 27, 1997) ("While it is unclear as to when the criminal defendants will go to trial, the fact that indictments have been issued suggests that a stay would be appropriate") (citing); *see also SEC v. Dresser Indus.*, 628 F.2d 1368, 1375-76 (D.C. Cir. 1980) ("Other than where there is specific evidence of agency bad faith or malicious governmental tactics, the strongest case for deferring civil proceedings until after completion of criminal proceedings is where a party under indictment for serious offense is required to defend a civil or administrative action involving the same matter.").

Effect of a stay on the public interest: Public-policy considerations support a stay of this civil action. While the public has an interest in a quick resolution of civil litigation, the public also "has an interest in ensuring that the criminal process can proceed untainted by civil litigation." *Chagolla*, 529 F. Supp.2d at 947; *see also Grubbs*, 2008 WL 906246, at *4 (noting the public interest in the priority of a criminal investigation); *Benevolence Int'l Found.*, 200 F. Supp. 2d at 941 (noting the public interest in prioritizing criminal litigation); *Bureerong v. Uvawas*, 167 F.R.D. 83, 87 (C.D. Cal. 1996) ("[T]he interests of the Government in protecting its criminal investigation are clearly the paramount concern here."). And, as discussed above, that interest would be compromised if Nowak and Smith were permitted to use the civil discovery process to circumvent the limitations under the Federal Rules of Criminal Procedure. *See Treadway*, 2005 WL 713826, at *4 ("[A] stay of discovery is often necessary where liberal discovery rules will allow a litigant to undermine, or gain an unfair advantage in, a potential criminal prosecution which parallels the

subject matter of the civil action."); *Bureerong*, 167 F.R.D. at 87 ("A stay of discovery will protect the integrity of the Government's investigation and ensure that the Defendants will not use the civil discovery processes to obtain discovery that is not authorized in a criminal case." (quotation omitted)); *Campbell*, 307 F.2d at 487 ("While the Federal Rules of Civil Procedure have provided a well-stocked battery of discovery procedures, the rules governing criminal discovery are far more restrictive. Separate policies and objectives support these different rules." (citations omitted)); *see also Benevolence Int'l Found.*, 200 F. Supp. 2d at 939 ("The Supreme Court and the Seventh Circuit, as well as courts in the Northern District of Illinois, have cited *Campbell* positively for the rule that a trial court should not permit a defendant in a criminal case to use liberal civil discovery procedures to gather evidence to which he might not be entitled under the more restrictive criminal rules" (collecting cases)). In addition, Nowak and Smith's co-defendant in the criminal case, Christopher Jordan, while not a party to this civil litigation, could nonetheless gain an unfair advantage if discovery were not stayed in this litigation. *See Treadway*, 2005 WL 713826, at *4 (noting that counsel for a defendant in the related criminal case "could certainly monitor the depositions" in the civil action and "use it to the advantage of the defense in the criminal case"). This factor, therefore, also weighs in favor of a stay.

Civil plaintiff's interest in proceeding expeditiously: The plaintiff in this civil action, the CFTC, does not oppose the requested stay. *See Bureerong*, 167 F.R.D. at 87 (citing the plaintiffs' lack of opposition to a requested stay as a factor weighing in favor of the stay). Further—and particularly if the requested stay is through the

termination of the criminal proceedings—resolution of the criminal case could narrow the scope of discovery and other issues in this civil litigation, which would benefit all parties, as well as judicial economy. *See, e.g., SEC v. Blaszczak*, No. 17-CV-3919 (AJN), 2018 WL 301091, at *3 (S.D.N.Y. Jan. 3, 2018) ("The Criminal Case will resolve issues of fact common to the civil case and may reduce the number of issues to be decided in subsequent proceedings in this case."); *State Farm Lloyds v. Wood*, No. CIV A H-06-503, 2006 WL 3691115, at *3 (S.D. Tex. Dec. 12, 2006) ("The outcome of the criminal proceedings may guide the parties in settlement discussions and potentially eliminate the need to litigate some or all of the issues in this case."); *In re Worldcom, Inc. Sec. Litig.*, No. 02 Civ. 3288, 2002 WL 31729501, at *8 (S.D.N.Y. Dec. 5, 2002) ("The conviction of a civil defendant as a result of the entry of a plea or following a trial can contribute significantly to the narrowing of issues in dispute in the overlapping civil cases and promote settlement of civil litigation."); *Benevolence Int'l Found.*, 200 F. Supp. 2d at 491 ("Clearly, the resolution of the related criminal matter will resolve many issues in this civil case. A stay of this case will circumvent duplicative efforts by the two judges in the parallel civil and criminal cases. At the same time, the stay will prevent potentially contradictory decisions regarding nearly identical issues of law and fact in the parallel proceedings."); *Emich Motors Corp. v. Gen. Motors Corp.*, 340 U.S. 558, 568 (1951) ("It is well established that a prior criminal conviction may work an estoppel in favor of the Government in a subsequent civil proceeding."). Accordingly, this factor weighs in favor of a stay.

The burden imposed on Defendants if a stay is denied: Denying a stay would impose a burden on Nowak and Smith in at least two significant respects. First, it would force both Nowak and Smith to defend two cases simultaneously. Second, denying a stay in this action would force Nowak and Smith to choose between invoking their Fifth Amendment right against self-incrimination and risking that any such invocation would be used as a basis for an adverse inference in this civil case, or testifying or otherwise responding to civil discovery and having their responses used against them in the criminal case. *See Chagolla*, 529 F. Supp. 2d at 947 ("A civil defendant in this situation who is effectively backed into a corner in which he has no viable choice but to claim the privilege is forced to face a significant risk of unfair prejudice that may be virtually impossible to remedy."). Granting the stay would relieve Nowak and Smith of this dilemma. Accordingly, this factor weighs in favor of a stay.

In sum, each of the factors supports a stay in this matter, in light of the parallel criminal prosecution against Nowak and Smith in *United States v. Smith, et al.*, Case No. 19 CR 669 (N.D. Ill.).

CONCLUSION

For the foregoing reasons, the Motion of the United States to Intervene and to Stay this civil action through the conclusion of the parallel criminal prosecution against Nowak and Smith in *United States v. Smith et al.*, Case No. 19 CR 669 (N.D. Ill.) should be granted.

Respectfully submitted,

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Chief, Fraud Section
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By: /s/*Matthew F. Sullivan*
Matthew F. Sullivan
Trial Attorney

Avi Perry
Assistant Chief

Dated: October 31, 2019

CERTIFICATE OF SERVICE

I, Matthew F. Sullivan, hereby certify that on October 31, 2019, I caused the foregoing Motion of the United States to Intervene and to Stay to be electronically filed with the Clerk of Court by using the Court's electronic filing system, which will automatically send a notice of electronic filing to the plaintiff and the defendants' representatives who have entered an appearance in this case.

/s/*Matthew F. Sullivan*
Matthew F. Sullivan