No. 12-1269

In the United States Court of Appeals for the Seventh Circuit

MICHAEL MOORE, CHARLES HOOKS, PEGGY FECHTER, JON MAIER, SECOND AMENDMENT FOUNDATION, INC., AND ILLINOIS CARRY,

Plaintiffs-Appellants,

v.

LISA MADIGAN, in her Official Capacity as Attorney General of the State of Illinois, and HIRAM GRAU, in his Official Capacity as Director of the Illinois State Police,

Defendants-Appellees.

Appeal from a Judgment of the United States District Court for the Central District of Illinois, The Hon. Sue E. Myerscough, District Judge
District Court No. 3:11-CV-3134

OPPOSITION TO PETITION FOR REHEARING EN BANC

David G. Sigale*
Law Firm of David G. Sigale, P.C.
739 Roosevelt Road, Suite 304
Glen Ellyn, IL 60137
630.452.4547/630.596.4445

*Counsel of Record

Alan Gura
Gura & Possessky, PLLC
101 N. Columbus St., Ste.405
Alexandria, VA 22314
703.835.9085/703.997.7665

David D. Jensen
David Jensen PLLC
111 John Street, Suite 230
New York, NY 10038
212.380.6615/917.591.1318

Table of Contents

Table of Authorities.. ii

Introduction.. 1

Argument.. 2

I. Defendants Misstate Supreme Court Precedent, Which Neither Confines the Second Amendment to the Home, Nor Allows the Second Amendment to be Read "Narrowly," But Supplies a Binding Interpretation of "Bear Arms" Correctly Followed by the Panel. 2

II. Defendants Misconstrue Precedent from This and Other Circuits.. 6

III. The Panel Correctly Rejected the Second Circuit's Opinion in *Kachalsky*, Which is Defiant of *Heller* and Otherwise Flawed.. 9

IV. The Government's Beliefs Regarding the Second Amendment are Irrelevant and Not a Proper Subject of Adjudication.. 13

Conclusion. 15

Table of Authorities

Cases

Baraket v. *Holder*,
632 F.3d 56 (2d Cir. 2011) 3

Bateman v. *Perdue*, No. 5:10-CV-265-H,
2012 U.S. Dist. LEXIS 47336 (E.D.N.C. Mar. 29, 2012). 8

Beal v. *Stern*,
184 F.3d 117 (2d Cir. 1999). 12

Butler v. *Michigan*,
352 U.S. 380 (1957). 13

Cohens v. *Virginia*,
19 U.S. (6 Wheat.) 264 (1821). 7

District of Columbia v. *Heller*,
554 U.S. 570 (2008). . . . . passim

Engel v. *Vitale*,
370 U.S. 421 (1962). 13

Ezell v. *City of Chicago*,
651 F.3d 684 (7th Cir. 2011). 6, 7, 11-13

FCC v. *Fox Television Stations, Inc.*,
129 S. Ct. 1800 (2009). 7

Gideon v. *Wainwright*,
372 U.S. 335 (1963). 13

Hormel Foods Corp. v. *Jim Henson Prods.*,
73 F.3d 497 (2d Cir. 1996) 4

Kachalsky v. *County of Westchester*,
701 F.3d 81 (2d Cir. 2012). 9-14

McDonald v. *City of Chicago*,
130 S. Ct. 3020 (2010) 2, 6, 9

Metzl v. *Leininger*,
57 F.3d 618 (7th Cir. 1995). 14

Meyer v. *Nebraska*,
262 U.S. 390 (1923). 13

Mosby v. *Devine*,
851 A.2d 1031 (R.I. 2004).. 12

Norris v. *United States*,
687 F.2d 899 (7th Cir. 1982). 7

People v. *Zerillo*,
189 N.W. 927 (Mich. 1922).. 12

Sabri v. *United States*,
541 U.S. 600 (2004). 12

Sarnoff v. *Am. Home Prods. Corp.*,
798 F.2d 1075 (7th Cir. 1986). 3

Schubert v. *DeBard*,
398 N.E.2d 1339 (Ind. Ct. App. 1980). 12

Seminole Tribe of Fla. v. *Florida*,
517 U.S. 44 (1996) 3

Sir John Knight's Case,
87 Eng. Rep. 75 (K.B. 1686).. 4

State v. *Blocker*,
630 P.2d 824 (Ore. 1981) 2

Staub v. *City of Baxley*,
355 U.S. 313 (1958) 12

United States v. *Bloom*,
149 F.3d 649 (7th Cir. 1998). 3

United States v. *Booker*,
375 F.3d 508 (7th Cir. 2004). 7

United States v. *Marzzarella*,
614 F.3d 85 (3d Cir. 2010). 6

United States v. *Masciandaro*,
638 F.3d 458 (4th Cir. 2011). 7, 8

United States v. *Skoien*,
614 F.3d 638 (7th Cir. 2010) (en banc). 5

United States v. *Weaver*, No. 2:09-CR-00222,
2012 U.S. Dist. LEXIS 29613 (S.D. W. Va. Mar. 7, 2012). 8

Wilson v. *State*,
33 Ark. 557 (1878). 10

Woollard v. *Sheridan*,
863 F. Supp. 2d 462 (D. Md. 2012). 8

Other Authorities

Editorial: Madigan Should Appeal Gun Ruling,
CHICAGO SUN-TIMES (Dec. 11, 2012), available
at http://www.suntimes.com/opinions/16952377
-474/editorial- madigan-should-appeal-gun-
ruling.html (last visited Jan. 23, 2013). 11

Robert Cottrol & Raymond Diamond,
"Never Intended to be Applied to
the White Population,"
70 Chi.-Kent L. Rev. 1307 (1995). 10

INTRODUCTION

There either is, or is not, a right to carry handguns outside the home for self-defense—a practice prevalent in the overwhelming majority of the States, Pl. Br. at 42-43, the abuse of which by properly licensed individuals is exceedingly rare, NRA Am. Br. at 17-21. If there is no such right, Plaintiffs have failed to state a claim. If the right exists, its total prohibition by Illinois—unique among the 50 States—must fall.

Questions that might arise in the course of regulating, rather than prohibiting, the right to bear arms must be left to future cases, as the panel opinion is indisputably consistent with the Second Amendment's text, history, tradition, and the precedent of this Court and the Supreme Court. Other circuits may decline to follow Supreme Court opinions, but that is no reason for this Court to do so.

In any event, the existence of a right to bear arms does not depend upon "proof" that carrying handguns is a good idea. That sort of dispute may occupy constitutional conventions, not courts. Where enumerated, fundamental rights are implicated, courts must review, not rubber stamp, legislative opinions. The panel properly reviewed Illinois' absolute prohibition of bearing arms for self-defense.

ARGUMENT

I. Defendants Misstate Supreme Court Precedent, Which Neither Confines the Second Amendment to the Home, Nor Allows the Second Amendment to be Read "Narrowly," But Supplies a Binding Interpretation of "Bear Arms" Correctly Followed by the Panel.

Defendants erroneously assert that *District of Columbia* v. *Heller*, 554 U.S. 570 (2008), "recognized a Second Amendment right to possess handguns in the home for self-defense." Pet. at 1. To the contrary,

> [I]n [*Heller*], we held that the Second Amendment protects the right to keep and bear arms for the purpose of self-defense, *and* we struck down a District of Columbia law that banned the possession of handguns in the home.

McDonald v. *City of Chicago*, 130 S. Ct. 3020, 3026 (2010) (emphasis added). The Second Amendment "takes certain policy choices off the table," and these "*include* the absolute prohibition of handguns held and used for self-defense in the home." *Heller*, 554 U.S. at 636 (emphasis added). Just because *Heller* applied the right to strike down a home-possession prohibition, does not thereby limit the right to those circumstances. Cf. *State* v. *Blocker*, 630 P.2d 824, 825-26 (Ore. 1981) (individual right to bear arms in home applies equally beyond home).

Rejecting an argument that the term "bear arms" indicates military action, *Heller* held that "[a]t the time of the founding, as now, to 'bear'

meant to 'carry.'" *Heller*, 554 U.S. at 584 (citations omitted).

> To "bear arms," as used in the Second Amendment, is to "wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person."

Id. This definition of "bear arms" was not dictum.

> When an opinion issues for the Court, it is not only the result but also those portions of the opinion necessary to that result by which we are bound . . . "the principle of *stare decisis* directs us to adhere not only to the holdings of our prior cases, but also to their explications of the governing rules of law" . . .

Seminole Tribe of Fla. v. *Florida*, 517 U.S. 44, 67 (1996) (citations omitted). Language "explain[ing] the court's rationale . . . is part of the holding." *United States* v. *Bloom*, 149 F.3d 649, 653 (7th Cir. 1998). In contrast,

> [a] dictum is a statement in a judicial opinion that could have been deleted without seriously impairing the analytical foundations of the holding—that, being peripheral, may not have received the full and careful consideration of the court that uttered it.

Sarnoff v. *Am. Home Prods. Corp.*, 798 F.2d 1075, 1084 (7th Cir. 1986). "[I]t is not substantive discussion of a question or lack thereof that distinguishes holding from dictum, but rather whether resolution of the question is necessary for the decision of the case." *Baraket* v. *Holder*, 632 F.3d 56, 59 (2d Cir. 2011) (citation omitted).

Considering its need to address the District of Columbia's collectivist interpretation of "bear arms," the Court's conclusion that the right to "bear arms" is the right to "carry weapons in case of confrontation" was essential to *Heller*'s resolution. What "bear arms" means "was before the court; was argued before the court; and was passed upon by the court. It was not dictum." *Hormel Foods Corp.* v. *Jim Henson Prods.*, 73 F.3d 497, 508 (2d Cir. 1996) (citations and internal punctuation omitted). *Heller*'s many pages describing how that right applies outside the home confirm that the matter received exhaustive consideration.

Heller's definition of "bear arms" binds this Court. And common sense dictates that "[t]o speak of 'bearing' arms within one's home would at all times have been an awkward usage," and that "one doesn't have to be a historian to realize that a right to keep and bear arms for personal self-defense in the eighteenth century could not rationally have been limited to the home." Slip Op. at 5.

But Defendants and their amici err in claiming that the panel ignored history. They are simply unhappy that the panel (correctly) rejected their views of, for example, the Statute of Northampton, and *Sir John Knight's Case*, 87 Eng. Rep. 75 (K.B. 1686), relating to the

ancient common law crime of affray, Slip Op. at 6—a topic *Heller* exhaustively surveyed. Pl. Br. at 36-40; Reply Br. at 5-8.

The panel correctly viewed "[t]he historical issues as settled by *Heller*." Slip Op. at 18. Indeed, beyond *Heller*'s exploration of bearing arms at early common law, the early state constitutions and treatises *Heller* referenced to define "bear arms" plainly endorsed the right to carry handguns for self-defense. Pl. Br. at 27-28, 38. *Heller* surveyed early American precedent confirming the right to carry guns outside the home. *Id.* at 32-34. It limited the right to bear arms in ways making sense only in the context of defensive handgun carrying outside the home. *Id.* at 30-31. Moreover, *Heller* was the fifth Supreme Court opinion mentioning the Second Amendment's application for defense in public. *Id.* at 21-23. The issue is not open to this Court.

The panel's reading of "bear arms" was neither broad nor narrow. It was straightforward. The panel emphasized, as did *Heller*, that States have many options to regulate the carrying of guns, but no such regulations were at issue, only a total prohibition. Neither *United States* v. *Skoien*, 614 F.3d 638 (7th Cir. 2010) (en banc), nor any other case may stand for the proposition that Second Amendment rights are

to be read "narrowly," Pet. at 1, because Second Amendment rights are fundamental, *McDonald*, and their infringement is not generally presumed constitutional, *Heller*, 554 U.S. at 629 n.27.[1]

II. Defendants Misconstrue Precedent from This and Other Circuits.

The panel opinion is consistent with *Skoien*, which unremarkably advised that *Heller* should not be read to contain absent holdings, but also declined to limit *Heller* to its facts. "[T]he Second Amendment creates individual rights, *one of which* is keeping operable handguns at home for self-defense. What other entitlements the Second Amendment creates . . . *were left open*." *Id.* at 640 (emphasis added). *Skoien* did not turn on the gun's location, but "the right to maintain proficiency in firearm use," *Ezell* v. *City of Chicago*, 651 F.3d 684, 708 (7th Cir. 2011), is one Chicagoans typically exercise outside their homes. "[C]ertainly, to some degree, [the Second Amendment] must protect the right of law-abiding citizens to possess firearms for other, as-yet-undefined, lawful purposes [beyond home defense]." *United States* v. *Marzzarella*,

---

[1]Barring *concealed* handgun carry may be lawful, as Illinois may regulate the manner in which guns are carried. Plaintiffs did not demand, and the panel did not compel, Illinois to allow handgun carrying in any specific manner. Pl. Br. at 32-35, Reply Br. at 10-12.

614 F.3d 85, 92 (3d Cir. 2010).

If *Heller* left the issue open, the panel was obligated to resolve it. Article III courts may not refuse jurisdiction, *Cohens* v. *Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821), and the Supreme Court is not a court of first impression, *FCC* v. *Fox Television Stations, Inc.*, 129 S. Ct. 1800, 1819 (2009). "Constitutional law is very largely a prediction of how the Supreme Court will decide particular issues when presented to it for decision." *Norris* v. *United States*, 687 F.2d 899, 904 (7th Cir. 1982). "When the Supreme Court says that it is not resolving an issue, it perforce confides the issue to the lower federal courts for the first pass at resolution." *United States* v. *Booker*, 375 F.3d 508, 513 (7th Cir. 2004), *aff'd*, 543 U.S. 220 (2005). And if there is a right to carry handguns for self-defense, "[b]oth *Heller* and *McDonald* suggest that broadly prohibitory laws restricting the core Second Amendment right—*like* [home handgun prohibitions]—are categorically unconstitutional." *Ezell,* 651 F.3d at 703 (emphasis added).

Defendants overstate the holding of *United States* v. *Masciandaro*, 638 F.3d 458 (4th Cir. 2011). *Masciandaro* chose its words carefully in

cautioning restraint. It did not urge wholesale judicial abdication in Second Amendment cases arising outside the home. While "[t]here may or may not be a Second Amendment right in some places beyond the home," courts should consider the issue "only upon necessity and only then by small degree." *Id.* at 475. While that "necessity" was found absent under *Masciandaro*'s facts, three courts in that Circuit had no problem locating it in plainly appropriate cases where the issue, as here, could not be avoided—and finding that the Second Amendment extends beyond the home. See *Woollard* v. *Sheridan*, 863 F. Supp. 2d 462 (D. Md. 2012), *appeal pending*, No. 12-1437 (4th Cir. filed Apr. 2, 2012); *Bateman* v. *Perdue*, No. 5:10-CV-265-H, 2012 U.S. Dist. LEXIS 47336 (E.D.N.C. Mar. 29, 2012); *United States* v. *Weaver*, No. 2:09-CR-00222, 2012 U.S. Dist. LEXIS 29613 (S.D. W. Va. Mar. 7, 2012). In *Bateman* and *Woollard*, the courts struck down state laws violating the Second Amendment right to carry guns outside the home.

Masciandaro's statement that "[w]e do not wish to be even minutely responsible for some unspeakably tragic act of mayhem because in the peace of our judicial chambers we miscalculated as to Second Amendment rights," 638 F.3d at 475, is troubling. Miscalculating

against the individual right is more likely to result in tragic acts of mayhem, as individuals, most of whom are responsible and law-abiding, are left unable to defend themselves.

Moreover, judges interpreting constitutional text do not make the law; they apply it. Judges enforcing Second Amendment rights might personally reflect on crimes that are thereby deterred, or the peace of mind individuals derive from having access to the means of self-defense. But if judges substituted their policy doubts for constitutional text, or declined to enforce rights for fear of being blamed in event of negative consequences, there would be little left of the Fourth, Fifth, Sixth, or Eighth Amendments. "The right to keep and bear arms . . . is not the only constitutional right that has controversial public safety implications." *McDonald*, 130 S. Ct. at 3045.

III. The Panel Correctly Rejected the Second Circuit's Opinion in *Kachalsky*, Which is Defiant of *Heller* and Otherwise Flawed.

The panel was correctly wary of *Kachalsky* v. *County of Westchester*, 701 F.3d 81 (2d Cir. 2012), *cert. petition pending*, No. 12-845 (filed Jan. 8, 2013), which all-but-defied *Heller* and *McDonald*. Notwithstanding *Heller*'s definition of "bear arms," *Kachalsky* dismissed concern that

"the need for self-defense may arise at any moment without prior warning," 701 F.3d at 100, and held that the legislature could disregard the interest in being armed against "unexpected confrontation," *id*., as "there is no right to engage in self-defense with a firearm until the objective circumstances justify the use of deadly force," *id.* (citation omitted). Under this logic, Chicago could conclude that the hazards of handgun possession outweighed Otis McDonald's fear of unexpected home invasion absent a special need for self-defense.

Defendants endorse *Kachalsky*'s casual historical survey, but *Kachalsky* found history and tradition "highly ambiguous," *id.* at 91, and of no use. Unsurprisingly, its analysis is flawed. For example, Reconstruction Era handgun carry prohibitions, Pet. at 7, typically only barred carrying *some* handguns, see, e.g., *Wilson* v. *State*, 33 Ark. 557, 560 (1878), for suspect reasons. Robert Cottrol & Raymond Diamond, "Never Intended to be Applied to the White Population," 70 Chi.-Kent L. Rev. 1307, 1333 (1995). Illinois bars the carrying of *all* handguns.

Kachalsky's declaration that "*Heller* explains that the 'core' protection of the Second Amendment is the 'right of law abiding, responsible citizens to use arms in defense of hearth and home.' *Heller*,

554 U.S. at 634-35," 701 F.3d at 93, is an overbroad elliptical citation. Considering the omitted internal language provides that courts may not substitute their opinions for the core right, it suggests courts may indeed create gun policy outside the home.

At best, *Kachalsky*'s home/public distinction is an overstatement. Three times, *Heller* succinctly describes the Second Amendment's "core" interest, to wit: (1) the Second Amendment's "core lawful purpose [is] self-defense," *Heller*, 554 U.S. at 630; (2) "Individual self-defense . . . was the *central component* of the right itself," *id.* at 599; (3) "the inherent right of self-defense has been central to the Second Amendment right," *id.* at 628. Nothing in these terse definitions of the Second Amendment's "core" limits self-defense interests to the home.

Considering Chicago's "thumbing of the municipal nose at the Supreme Court" in this area, *Ezell*, 651 F.3d at 715 (Rovner, J., concurring in the judgment), and calls to subvert the panel opinion by adopting New York's illusory permitting scheme, *Editorial: Madigan Should Appeal Gun Ruling*, CHICAGO SUN-TIMES (Dec. 11, 2012), available at http://www.suntimes.com/opinions/16952377-474/editorial-madigan-should-appeal-gun-ruling.html (last visited Jan. 23, 2013), it

bears mention that *Kachalsky* also erred in holding that prior restraint is exclusively a rule of substantive First Amendment protection. *Staub* v. *City of Baxley*, 355 U.S. 313, 322 (1958) (prior restraint secures "peaceful enjoyment of freedoms which the Constitution guarantees").[2] It obviously erred in offering that prior restraint doctrine is satisfied upon enunciation of any purported standard. *Beal* v. *Stern,* 184 F.3d 117, 126 n.6 (2d Cir. 1999). And it ignored various state court opinions that prior restraint doctrine secures the right to bear arms. See *Mosby* v. *Devine*, 851 A.2d 1031, 1047 (R.I. 2004); *People* v. *Zerillo*, 189 N.W. 927, 928 (Mich. 1922). Directly on-point, in this circuit, stands *Schubert* v. *DeBard*, 398 N.E.2d 1339, 1341 (Ind. Ct. App. 1980). *Kachalsky* also erred in limiting overbreadth claims to the First Amendment. See *Sabri* v. *United States*, 541 U.S. 600, 609-10 (2004).

Yet ultimately, *Kachalsky* held that "the Amendment must have *some* application in the very different context of the public possession of firearms." 701 F.3d at 89. The panel opinion could not sustain New York's scheme, but *Kachalsky* might not sustain Illinois' total ban.

---

[2]Even if true, that would be a point in favor of applying prior restraint to the Second Amendment. *Ezell*, 651 F.3d at 706-07.

IV. The Government's Beliefs Regarding the Second Amendment are Irrelevant and Not a Proper Subject of Adjudication.

Plainly, the Legislature thinks carrying handguns is a bad idea. But the Second Amendment does not invite courts to determine whether there *should* be a right to bear arms. Answering whether the Second Amendment secures the right to carry handguns "requires a textual and historical inquiry into original meaning," *Ezell*, 651 F.3d at 701, here guided by Supreme Court precedent, which the panel conducted.

Defendants' claim that "there is no precedent for a requirement that the government defend against a facial challenge to its laws without the right to present evidence to the finder of fact," Pet. at 12, is easily refuted. *Heller*, for example, did not turn on any of Washington, D.C.'s many factual arguments. Neither did *McDonald*. Nor did countless cases upholding fundamental rights. See, e.g. *Gideon* v. *Wainwright,* 372 U.S. 335 (1963); *Engel* v. *Vitale*, 370 U.S. 421 (1962); *Butler* v. *Michigan*, 352 U.S. 380 (1957); *Meyer* v. *Nebraska*, 262 U.S. 390 (1923).

Even *Kachalsky* recognized (though ironically, failed to implement)

> the rather unremarkable proposition that where a state regulation is entirely inconsistent with the protections afforded by an enumerated right—as understood through that right's text, history, and tradition—it is an exercise in futility to apply means-end scrutiny.

Kachalsky, 701 F.3d at 89 n.9. And neither adjudicative nor legislative facts determine the meaning of constitutional rights. Legislative facts were required to determine whether Good Friday, as opposed to Christmas and Thanksgiving, had become secularized such that its recognition by Illinois would not establish religion, or that its observance was so wide as to render keeping schools open that day unfeasible. *Metzl* v. *Leininger*, 57 F.3d 618 (7th Cir. 1995). But while "[t]he question of feasibility [was] not one that can be settled as a matter of first or general principles," *id.* at 622, the Establishment Clause was not up for debate, even if Illinois could "prove" that decreeing a state religion is wholesome and desirable. Unlike *Metzl*, this is very much "a matter of first or general principles." *Id.*

If every constitutional case is merely an invitation to deferentially review the reasonableness of legislative decisions, the Constitution is pointless. Of course the government is not expected to agree that any limitations on its powers are desirable. But what would be left of the Fourth Amendment, for example, were it to yield to police officials' solemn warnings that intruding into their assessment of what searches and seizures are "reasonable" would jeopardize public safety. This

game can also be played with governmental powers. Trials might adjudicate the desirability of Congress' power to regulate commerce, or subject the Sixteenth Amendment to the consensus of economists.

Holding Illinois' total carry prohibition is off the constitutional table was an *interpretive* determination, well within the panel's authority. What Illinois might or might not "prove" about the wisdom of the right to bear arms has no bearing on its existence. Triers of fact do not determine whether the government may establish religion, censor speech, prohibit contraceptives and abortion—or ban bearing arms.

CONCLUSION

The petition for rehearing en banc should be denied.

Dated: January 23, 2013

Respectfully submitted,

By: /s/ Alan Gura

David G. Sigale*
Law Firm of David G. Sigale, P.C.
739 Roosevelt Road, Suite 304
Glen Ellyn, IL 60137
630.452.4547/630.596.4445

Alan Gura
Gura & Possessky, PLLC
101 N. Columbus St., Ste. 405
Alexandria, VA 22314
703.835.9085/703.997.7665

David D. Jensen
David Jensen PLLC
111 John Street, Suite 230
New York, NY 10038
212.380.6615/917.591.1318

Attorneys for Plaintiffs-Appellants Michael Moore, Charles Hooks, Jon Maier, Peggy Fechter, Second Amendment Foundation, Inc., and Illinois Carry

*Counsel of Record

CERTIFICATE OF SERVICE

Certificate of Service When All Case Participants Are CM/ECF Participants

I hereby certify that on January 23, 2013, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ David G. Sigale

CERTIFICATE OF SERVICE

Certificate of Service When Not All Case Participants Are CM/ECF Participants

I hereby certify that on _____, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days, to the following non-CM/ECF participants:

counsel / party:	address:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

s/_____