

IV. AN ANALYSIS OF WHEN RESPONSES WERE FILED IN A SAMPLE OF CASES IN A SAMPLE OF COURTS

We discovered that a document is usually filed on the day that it is due. A document filed at night is typically due on that day, but sometimes it is due on the following day. Nighttime responses sometimes respond to nighttime filings by opposing parties.

We selected ten district courts at random and selected at random for each court five motions in civil cases and five motions in criminal cases to see when oppositions were filed. We also looked at responses filed at night, after 8:00 p.m. For each court, we selected at random five nighttime responses in civil cases and five nighttime responses in criminal cases. Responses included oppositions to motions and replies responding to motion oppositions.

Statistically, the prosecution against each defendant in a multidefendant criminal case is often considered a separate case, as it was here for random selection purposes. The codes we used to identify motions and responses were developed by the courts for purposes that did not include this study, and they closely approximate how we would have identified motions and responses had we examined each of the several million docket entries individually.

It was not always clear when the responses were due. And late responses are not always challenged.

For comparison, we also looked at motions and responses filed in three districts with time deadlines before midnight: the Eastern District of Arkansas (5:00 p.m.), the District of Delaware (6:00 p.m.), and the District of Massachusetts (6:00 p.m.). Because nighttime responses in criminal cases in the Eastern District of Arkansas and the District of Delaware were so uncommon, we looked at all of them instead of at a random sample.

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Courts with a Time-of-Day Deadline

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The District Court for the Southern District of Florida

Responses are due two weeks after the motion is served, and replies are due one week later.

Docket text for motions often states response deadlines. Nighttime responses sometimes followed other nighttime briefing. Responses were sometimes filed before they were due.

Motions were coded “motion,” “crmotion,” “mot2255,” “motionexpedited,” or “crmotionexpedited”; coded “respm” and “affsupp”; or coded “respm-cr” and “memsup.” Responses were coded “resp” or “crrespm”; coded “respm” and “respopp,” “reply,” “response,” “rel,” or “affopp”; or coded “respm-cr” and “crrespop,” “response,” “crreply,” or “memopp.”

Due Dates in Civil Cases

Responses were sometimes filed before they were due.

Five Randomly Selected Motions

Two responses were filed during business hours before the due date, and three other motions received no response.

1. *Mitchell v. Metropolitan Life Insurance Company*, S.D. Fla. No. 1:17-cv-23323, D.E. 34 (04/18/2018 16:33): STIPULATED MOTION for Substitution of Counsel. Substituting Jeannine C. Jacobson for Stephanie A. Segalini by Metropolitan Life Insurance Company. Attorney Jeannine Cline Jacobson added to party Metropolitan Life Insurance Company (pty:dft). Responses due by 5/2/2018 (Attachments: # (1) Text of Proposed Order Proposed Order on Substitution of Counsel) (Jacobson, Jeannine). The stipulated motion was granted on the day that it was filed, D.E. 35.

2. *The Lopatin Lawfirm P.C. v. Eggnatz Pascucci, P.A.*, S.D. Fla. No. 0:17-cv-62581, D.E. 25 (08/01/2018 16:23): Defendant’s MOTION for Sanctions Pursuant to Rule 11 by Joshua H Eggnatz, Eggnatz Pascucci, P.A., Eggnatz, Lopatin & Pascucci, LLP, Michael J Pascucci. (Attachments: # (1) Exhibit 1: Rule 11 Motion Served February 15, 2018 with referenced exhibits) (Mitchel, Steven). On September 13, the defendants moved for a hearing on their August 1 sanctions motion, D.E. 28. On October 2, the court granted the sanctions motion, to which the plaintiff did not respond, D.E. 31.

3. *Paolino v. PNC Bank, National Association*, S.D. Fla. No. 0:18-cv-61266, D.E. 38 (08/22/2018 14:16): MOTION to Compel Non-Party Witness Charles D. Barnard to Appear for Videotaped Deposition (Responses due by 9/5/2018), MOTION for Sanctions by James E. Albertelli, P.A. (Attachments: # (1) Exhibit Exhibit A – Subpoena to NP Barnard, # (2) Exhibit Exhibit B – Cert of Non-Appearance) (Kohlmyer, Ernest). On the day after a discovery order was

filed, the court ordered a response filed within five days of the order, D.E. 40. The response was filed at 5:01 p.m. on the following day, D.E. 41. The motion was resolved three days after that, D.E. 42.

4. *Group JG LLC v. Scottsdale Insurance Company*, S.D. Fla. No. 0:18-cv-61510, D.E. 11 (08/24/2018 13:24): Amended MOTION to Adopt/Join [9] Defendant's MOTION to Adopt/Join [1] Notice of Removal (State Court Complaint), *Motion to Join Direct Dryer Corp. as Party Plaintiff* by Scottsdale Insurance Company. (McLester, Mindy). The motion to join removal was granted on the day that it was filed, D.E. 12.

5. *Gomez v. Exxon Mobil Corporation*, S.D. Fla. No. 1:18-cv-20803, D.E. 11 (04/27/2018 09:37): MOTION to Dismiss [1] Complaint *and Incorporated Memorandum of Law* by Exxon Mobil Corporation. Responses due by 5/11/2018 (Upshaw, Anthony). The afternoon response was filed ten days after the filing of the motion, D.E. 12, and an afternoon reply was filed a week after that, D.E. 13. A bit more than two weeks later, the court referred the case to mediation, D.E. 15, and the case was dismissed as settled about seven months after that, D.E. 21.

Five Randomly Selected Nighttime Responses

Four replies were filed from one week to seventeen days after opposition briefs. An opposition brief was filed nearly two months after a motion.

1. *Dunn v. Takata Corporation*, S.D. Fla. No. 1:14-cv-24009, D.E. 1045 (10/12/2018 23:42): RESPONSE in Opposition re (2988 in 1:15-md-02599-FAM, 1029 in 1:14-cv-24009-FAM) Defendant's MOTION to Dismiss with Prejudice (2762 in 1:15-md-02599-FAM) Amended Complaint (2981 in 1:15-md-02599-FAM, 1022 in 1:14-cv-24009-FAM) MOTION to Dismiss (1021 in 1:14-cv-24009-FAM) MOTION to Stay re (2759 in 1:15-md-02599-FAM) Amended Complaint (1023 in 1:14-cv-24009-FAM, 2982 in 1:15-md-02599-FAM) MOTION to Dismiss with Prejudice (2762 in 1:15-md-02599-FAM, 940 in 1:14-cv-24009-FAM) Amended Complaint, *and Incorporated Memorandum of Law* (2983 in 1:15-md-02599-FAM) MOTION to Dismiss (2758) Amended Complaint *Plaintiffs' Omnibus Response In Opposition to Defendants' Motions to Dismiss The Amended Consolidated Class Action Complaints Against GM, FCA, Volkswagen, and Mercedes Defendants* filed by Plaintiffs Lead Counsel. Replies due by 10/19/2018. (Attachments: # (1) Appendix A) Associated Cases: 1:15-md-02599-FAM, 1:14-cv-24009-FAM (Prieto, Peter). The 11:42 p.m. opposition followed a 12:01 a.m. motion by a week short of two months. A 10:02 p.m. reply followed the opposition by five-and-a-half weeks, D.E. 1086. The motion was resolved somewhat more than six months after the motion was filed, D.E. 1320.

2. *Cruz v. Commissioner of Social Security*, S.D. Fla. No. 1:16-cv-21307, D.E. 38 (07/26/2018 23:53): REPLY to Response to Motion re [35] Plaintiff's MOTION for Attorney Fees *Under the Equal Access to Justice Act* filed by Ibrahim Cruz. (Palacios-Paredes, Katherine). An afternoon July 3 fee motion was followed thirteen days later by an afternoon opposition, D.E. 37. The 11:53 p.m. reply was filed ten days later.

3. *Olguin v. Florida's Ultimate Heavy Hauling LLC*, S.D. Fla. No. 0:17-cv-61756, D.E. 48 (05/29/2018 22:48): REPLY to Response to Motion re [37] Plaintiff's MOTION to Strike [36] Answer to Complaint *Part of Defendants' Fourth Affirmative Defense* filed by Ricardo Jorge Olguin. (Kozolchyk, Elliot). The 11:45 p.m. May 9 strike motion was followed twelve days later by an afternoon opposition, D.E. 38. The 10:48 p.m. reply followed the opposition by eight days.

4. *Silver Streak Trailer Company, Inc. v. Thor Industries, Inc.*, S.D. Fla. No. 2:18-cv-14126, D.E. 69 (10/22/2018 20:16): REPLY to Response to Motion re [57] Plaintiff's MOTION for Extension of Time to File Response/Reply/Answer as to [44] Defendant's MOTION to Dismiss for Lack of Jurisdiction [18] Amended Complaint, filed by Silver Streak Trailer Company, Inc. (Thornburg, Robert). An afternoon dismissal motion filed on September 27 was followed by a stay on October 3 pending determination of jurisdiction. Two days later, the plaintiff filed an afternoon opposition, eight days following the motion, D.E. 52. The 8:16 p.m. reply filed seventeen days later sought an extension of time for jurisdictional discovery. The case settled on November 27, D.E. 78.

5. *AMG Trade & Distribution, LLC v. Nissan North America, Inc.*, S.D. Fla. No. 0:18-cv-60062, D.E. 54 (12/10/2018 22:57): REPLY to Response to Motion re [28] MOTION for Summary Judgment filed by Nissan North America, Inc. (Attachments: # (1) Exhibit Table of Exhibits, # (2) Exhibit I, # (3) Exhibit J, # (4) Exhibit K, # (5) Exhibit L, # (6) Exhibit M) (Evans, Diana). The 8:15 p.m. October 9 summary judgment motion was followed by an October 22 extension of time until December 3 to file an opposition, D.E. 34. Sealed filings on the afternoon of December 3 were preceded by a 10:45 p.m. November 29 motion to seal the opposition, D.E. 43. The 10:57 p.m. reply followed a week later.

Due Dates in Criminal Cases

Motions typically were unopposed. Nighttime motion oppositions were sometimes filed on due dates and sometimes before.

Five Randomly Selected Motions

Four randomly selected motions were unopposed; the fifth was a government motion to reduce a sentence supported by the defendant on the day before the hearing rather than on the earlier due date.

1. *United States v. Khalifa*, S.D. Fla. No. 2:15-cr-14034-2, D.E. 276 (11/15/2018 13:53): MOTION for Hearing *Rule 35* by Ahmed Yehia Khalifa. Responses due by 11/29/2018 (O'Brien, Mark). The motion for a hearing accompanied a government motion to reduce sentencing, D.E. 275. In January 2019, the hearing was reset from January 18 to March 21, D.E. 280. The plaintiff filed an opposition to the government's sentence reduction motion on the day before the hearing, D.E. 286, and the court granted the motion, D.E. 288.

2. *United States v. Desire*, S.D. Fla. No. 1:17-cr-20116-5, D.E. 536 (11/14/2018 12:39): Unopposed MOTION to Continue Sentencing Hearing (Responses due by 11/28/2018), Unopposed MOTION To Surrender by

Henry Robert Desir. (Attachments: # (1) Text of Proposed Order) (Cariglio, Gennaro). Sentencing was reset six days after the unopposed motion, D.E. 539.

3. *United States v. Ryan*, S.D. Fla. No. 0:17-cr-60307, D.E. 29 (04/10/2018 14:48): Unopposed MOTION to Continue Sentencing Hearing by Willie Lee Ryan, III. Responses due by 4/24/2018 (Attachments: # (1) Text of Proposed Order) (Resnick, Robert). The unopposed motion was denied on the day that it was filed, D.E. 31.

4. *United States v. Daniels*, S.D. Fla. No. 1:18-cr-20430, D.E. 12 (07/25/2018 15:40): Unopposed MOTION to Continue Trial by David Michael Daniel. Responses due by 8/8/2018 (Natale, Anthony). The unopposed motion was granted on the following day, D.E. 13.

5. *United States v. D'Amico*, S.D. Fla. No. 9:18-cr-80179, D.E. 18 (12/31/2018 13:45): Unopposed MOTION to Continue Trial by Anthony Michael D'Amico. Responses due by 1/14/2019 (Suskauer, Michelle). The unopposed motion was granted a week later, D.E. 19.

Five Randomly Selected Nighttime Responses

Two motion responses were filed at night on the days due, and three apparently were filed at night before the days due.

1. *United States v. Esformes*, S.D. Fla. No. 1:16-cr-20549-1, D.E. 954 (10/29/2018 23:56): CONSOLIDATED RESPONSE by Philip Esformes to the Government's Objections [931] and AUSA Bernstein's [948] MOTION for Leave to Appear at Nov. 8, 2018 hearing for Dan Bernstein in his individual capacity Attorney/Representative: Jeffrey H. Sloman. Replies due by 11/5/2018. (Srebnick, Howard). Modified on 10/30/2018 to also link this entry to document [931] (jh). The 11:56 p.m. consolidated opposition followed an 8:14 p.m., September 24, objection to a report and recommendations by five weeks and an October 18 afternoon motion by eleven days. Both sides filed objections to the report and recommendations on the same day, *see also* D.E. 933 (defendant's objections filed at 11:51 pm.). The defendant's objections to the August 10 report and recommendations originally were due on Friday, August 24, D.E. 899. On August 16, the court granted the government's unopposed motion for a thirty-one-day extension to Monday, September 24, D.E. 902. The court granted the defendant a similar extension on August 22, setting October 15, three weeks after the objection deadline, as the due date for oppositions, D.E. 905. The court later granted an unopposed motion to extend the defendant's opposition deadline to October 29, D.E. 940, 941.

2. *United States v. Dell*, S.D. Fla. No. 1:17-cr-20437-2, D.E. 68 (03/12/2018 21:46): Memorandum in Opposition by USA as to Danny Dell, Bernard Thomas re [45] Defendant's MOTION to Suppress Evidence Unlawfully Obtained Pursuant to a Warrantless Search [47] MOTION to Suppress Physical Evidence (*AMENDED MEMORANDUM*) Replies due by 3/19/2018. (Miller, Lisa). A 9:46 p.m. amended opposition followed two suppression motions by two days short of four weeks. The government initially responded to the suppression motions within nine days, at 5:06 p.m. on February 23, D.E. 53. On February 27, the district judge referred the motions to a magistrate judge, D.E.

54. On March 1, the court granted one defendant a week's extension of the one-week deadline, until March 9, to reply, D.E. 56. On March 3, the court granted a new reply deadline to the other defendant too: March 7, D.E. 60. Both defendants filed replies on March 7, D.E. 61, 62. The government filed an amended opposition brief on March 12.

3. *United States v. Wang*, S.D. Fla. No. 1:17-cr-20449, D.E. 39 (02/12/2018 22:46): RESPONSE in Opposition by USA as to Chunzai Wang re [28] MOTION in Limine and Memorandum in Support of Motion in Limine Replies due by 2/20/2018. (Walleisa, Michael). The 10:46 p.m. opposition followed a daytime motion by five days.

4. *United States v. Atesiano*, S.D. Fla. No. 1:18-cr-20479-1, D.E. 107 (10/11/2018 21:37): RESPONSE in Opposition by USA as to Raimundo Atesiano, Charlie Dayoub, Raul Fernandez re [92] MOTION modify protective order re [35] Order on Motion for Protective Order, *intervene* Replies due by 10/18/2018. (Wallace, Harry). The 9:37 p.m. opposition followed an afternoon motion by two weeks.

5. *United States v. Rennie*, S.D. Fla. No. 9:18-cr-80097, D.E. 34 (07/16/2018 20:37): RESPONSE in Opposition by Robert Rennie re [33] MOTION Regarding Sealing of Motion to Suppress Filings and Hearing Replies due by 7/23/2018. (McCrae, M). The 8:37 p.m. opposition followed an afternoon motion by ten days.

The District Court for the Northern District of Illinois

In civil cases, the court may set a briefing schedule. In criminal cases, oppositions to motions are due two weeks after receipt of the supporting brief, and replies are due one week after receipt of the answering brief.

We observed four nighttime responses filed on the dates due.

Motions were coded “motion” or “crmotion.” Responses were coded “resp” or “crresp”; coded “respm” and “respopp,” “reply,” “response,” “memopp,” “sealresp,” “sealrply,” or “affopp”; coded “respoth” and “reply,” “resp,” “surreply,” or “crsrply”; or coded “respm-cr” and “response,” “crresp1,” “crreply1,” “crreply,” “sealrply,” “crmemop1,” or “sealresp.”

Due Dates in Civil Cases

The randomly selected motions and responses included at least two occasions of a response filed at night on the day that it was due.

Five Randomly Selected Motions

None of the randomly selected motions was opposed.

1. *Stalmack v. Berryhill*, N.D. Ill No. 1:17-cv-1720, D.E. 38 (10/04/2018 16:03): MOTION by Defendant Nancy A. Berryhill for attorney fees (*Agreed*) (Lindland, Kurt). The agreed attorney-fee motion was granted on the day that it was filed, D.E. 39.

2. *Doe v. White*, N.D. Ill No. 1:17-cv-3557, D.E. 99 (10/16/2018 13:45): MOTION by Plaintiff Jane Doe to withdraw motion to compel [97], motion for sanctions *as to Defendant Renee Jones Only* (Grieb, Mary). A motion to

withdraw a discovery motion was resolved at a hearing three days later, D.E. 103.

3. *Thomas v. Pfister*, N.D. Ill No. 1:17-cv-5936, D.E. 19 (04/11/2018 15:05): MOTION by Plaintiff Donzell Thomas to amend/correct amended complaint [16] (Attachments: # (1) Exhibit Letters Of Office, # (2) Exhibit Plaintiffs Second Amended Complaint) (Wachowski, Peter). The apparently unopposed motion to amend the complaint was granted two days later, D.E. 21.

4. *Beijing Choice Electronic Technology Co., Ltd. v. Contec Medical Systems USA, Inc.*, N.D. Ill No. 1:18-cv-825, D.E. 62 (05/07/2018 16:19): SEALED MOTION by Defendants Contec Medical Systems Co., Ltd., Contec Medical Systems USA, Inc. to *Compel Discovery Responsive to Interrogatories and Requests for Production from Beijing Choice Electronic Technology Co., Ltd.* (Attachments: # (1) Exhibit 1) (Campbell, Christopher). A discovery motion was continued at a hearing two days later, D.E. 65, and afterward resolved by agreement, D.E. 126.

5. *Metropolitan Life Insurance Company v. Hayes*, N.D. Ill No. 1:18-cv-2577, D.E. 14 (06/26/2018 16:42): MOTION by Plaintiff Metropolitan Life Insurance Company for service by publication, *Metropolitan Life Insurance Company's Motion to Serve Defendant Latasha E. Hayes by Publication* (Attachments: # (1) Exhibit A, # (2) Exhibit B, # (3) Exhibit C) (Beattie, Rachel). The publication motion accompanied a motion to amend the complaint, D.E. 12, and it was granted twenty-seven days later, D.E. 21, apparently without opposition.

Five Randomly Selected Nighttime Responses

Two responses were filed at night on the days that they were due, and the other three were filed at night, one seven days after and two seventeen days after the filing to which they responded. Three nighttime responses responded to nighttime filings.

1. *Needham v. Robert A. McDonald, Secretary of Veterans Affairs*, N.D. Ill No. 1:14-cv-8230, D.E. 114 (03/05/2018 20:45): RESPONSE by Gina Needhamin Opposition to MOTION by Defendant Robert A. McDonaldin limine [109] *Response in Opposition to Defendant's Motion in Limine I* (Attachments: # (1) Exhibit 1) (Litt, Paula). The 8:45 p.m. opposition was filed one week after an afternoon motion, and four days before the pretrial conference, D.E. 120.

2. *Young v. Obaisi*, N.D. Ill No. 1:15-cv-2412, D.E. 187 (07/17/2018 20:58): RESPONSE by Defendant Andrew Tilden to Rule 56 statement [179] *Plaintiff's Statement of Additional Facts* (Tengesdal, Robert). The 8:58 p.m. July 17 response by a 7:47 p.m. May 14 mover for summary judgment, D.E. 157, was filed seventeen days after the plaintiff's 9:48 p.m. June 30 Rule 56 statement. The summary judgment motion was denied on March 18, 2019, D.E. 197.

3. *Maui Jim, Inc. v. SmartBuy Guru Enterprises*, N.D. Ill No. 1:16-cv-9788, D.E. 213 (07/12/2018 22:31): RESPONSE by Motion Global Ltd., SmartBuy Guru Enterprises, SmartBuyGlasses Optical Limited, Smartbuyglasses Societa a Responsabilita Limitata in Opposition to MOTION by Plaintiff Maui Jim, Inc. to stay *Antitrust Discovery* [180] (Rosenfeld, Stephen). An 11:59 p.m.

Monday motion was responded to at 10:31 p.m. on a Thursday, seventeen days later.

4. *Hancock v. Sotheby's Inc.*, N.D. Ill No. 1:17-cv-7446, D.E. 42 (08/31/2018 22:58): RESPONSE by Jemal Lavan Hancock, Lavan Galleries LLC in Opposition to MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Defendants Benjamin Doller, Sotheby's Holdings, Inc., Sotheby's Inc., Sotheby's f/k/a Sotheby's Holdings Inc. [32] *RESPONSE COVER PAGE* (Oparanozie, George). The opposition was filed at 10:58 p.m., seven weeks after an afternoon motion, on the day that it was due according to a reset briefing schedule, D.E. 39.

5. *Reyes v. Dart*, N.D. Ill No. 1:17-cv-9223, D.E. 123 (11/29/2018 20:09): RESPONSE by Thomas Dart, Sabrina Rivero-Cancholain Opposition to MOTION by Plaintiff Wilbert Reyes for summary judgment *partial* [100] (Attachments: # (1) Notice of Filing) (Raines, Shawnte). The 8:09 p.m. summary judgment opposition was filed on the day that it was due, a deadline continued by the court, D.E. 115, in response to a 7:21 p.m. motion. The reply was filed at 10:37 p.m. on December 13, the day that it was due, D.E. 130.

Due Dates in Criminal Cases

Of the five motions and five nighttime responses selected at random, two involved nighttime responses on the dates due, responding to nighttime filings.

Five Randomly Selected Motions

One nighttime motion was responded to at night on the day the response was due, and another response was filed forty-four days after the motion. The other three motions were apparently uncontested.

1. *United States v. Withers*, N.D. Ill No. 1:13-cr-63-2, D.E. 541 (02/12/2018 20:23): MOTION by Jayvon Byrd for discovery as to Paul Davis, Jr, Alfred Withers, Julius Morris, Jayvon Byrd, Vernon Smith, Corey Barbee, Dante Jeffries *DEFENDANTS' POST-HEARING DISCOVERY MOTION* (Attachments: # (1) Appendix List, # (2) Appendix A, # (3) Appendix B, # (4) Appendix C, # (5) Appendix E) (Siegler, Alison). The government's opposition, D.E. 546, to the 8:23 p.m. discovery motion was filed at 10:18 p.m. on the due date set by the court, D.E. 545.

2. *United States v. Suppressed*, N.D. Ill No. 1:14-cr-488-1, D.E. 157 (03/01/2018 15:28): MOTION to withdraw as attorney as to Brian Bodie Paul Wagner (Wagner, Paul) Text Modified on 3/2/2018 (las). Appointed counsel sought to withdraw as the defendant's attorney because of the client's dissatisfaction. No response or action on the motion is docketed, but nor does the attorney further appear.

3. *United States v. Vadria*, N.D. Ill No. 1:15-cr-706-1, D.E. 101 (01/24/2018 17:57): MOTION by Adnan Vadria to modify conditions of release *to allow travel (amended)* (Glozman, Vadim). The apparently uncontested motion was granted on the following day, D.E. 103.

4. *United States v. Perkins*, N.D. Ill No. 1:17-cr-379, D.E. 31 (03/08/2018 15:26): MOTION by USA for forfeiture as to Charles Perkins *MOTION OF*

THE UNITED STATES FOR ENTRY OF FINAL ORDER OF FORFEITURE (Attachments: # (1) Exhibit A, # (2) Exhibit B) (Storino, Timothy). The forfeiture motion was filed seven weeks before a sentencing status conference, D.E. 38, at which a forfeiture order was issued, D.E. 40.

5. *United States v. Bozic*, N.D. Ill No. 1:18-cr-711, D.E. 29 (12/19/2018 13:41): MOTION by Rajko Bozic to suppress *DEFENDANT BOZIC'S MOTION TO SUPPRESS CELL-SITE LOCATION INFORMATION* (Jantz, Beth). The government's opposition was filed forty-four days after the suppression motion, D.E. 38

Five Randomly Selected Nighttime Responses

One nighttime response was filed on the due date set by the court, responding to three motions, one of which was also filed at night. The other nighttime responses responded to filings from three to twelve days earlier.

1. *United States v. Suppressed*, N.D. Ill No. 1:17-cr-183-1, D.E. 51 (02/08/2018 23:43): REPLY by Carl Triggs to response to motion [50] *REPLY IN SUPPORT OF MOTION TO MAINTAIN PRETRIAL RELEASE* (Jackson, Candace). The 9:43 p.m. reply was filed six days after an afternoon opposition, D.E. 50, which was filed eight days after a morning motion, D.E. 48.

2. *United States v. Francis*, N.D. Ill No. 1:17-cr-221-2, D.E. 46 (01/31/2018 20:46): RESPONSE by USA to sentencing memorandum [44] (Matthews, Jordan). The government's 8:46 p.m. response was filed on Wednesday night, five days after an afternoon sentencing memorandum.

3. *United States v. O'Brien*, N.D. Ill No. 1:17-cr-239-1, D.E. 182 (01/21/2018 20:49): REPLY by Jessica Arong O'Brien to MOTION by Jessica Arong O'Brien to strike [149], response [162] *Motion to Strike Surpluage* (Meza, Ricardo). The 8:49 p.m. reply was filed three days after an afternoon opposition, which was filed eight days after an afternoon motion.

4. *United States v. Sims*, N.D. Ill No. 1:17-cr-611-8, D.E. 323 (12/21/2018 20:39): RESPONSE by USA as to Labar Spann, Sammie Booker, Tremayne Thompson, Juhwun Foster, Marchello Devine, Rontrell Turnipseed, Keith Chatman, Stevon Sims, DeAndre Spann, Mikal Jones, Antonio Devine regarding MOTION by Marchello Devine to sever defendant (*Additional facts or basis to sever*) [294], MOTION by DeAndre Spann to sever defendant [265], MOTION by Rontrell Turnipseed to sever defendant [254] (Salib, Peter). The 8:39 opposition to two afternoon severance motions and one 9:19 p.m. severance motion was filed on the due date set by the court, D.E. 304, forty-five to sixty-seven days after the motions.

5. *United States v. Barbary*, N.D. Ill No. 3:17-cr-50047, D.E. 46 (06/27/2018 22:24): MEMORANDUM by Dexter F. Barbary in Opposition to miscellaneous other [45] (Jazwiec, Glenn). The 10:24 p.m. response was filed twelve days after government's afternoon sentencing memorandum, D.E. 45. Sentencing was held approximately two months later, D.E. 53.

The District Court for the Northern District of Iowa

Responses are due two weeks after the motion is served, and reply briefs, when necessary, are due one week after that.

Responses in civil cases tended to be filed on the days due, and responses in criminal cases tended to be filed one week following each motion.

Motions were coded “motion,” “crmotion,” or “ssmotion.” Responses were coded “resp” or “crresp”; coded “respm” and “joinr,” “memopp,” “rel,” “reply,” “resist,” “response,” “rplybrf,” or “selreswa”; or coded “respm-cr” and “crbropp,” “crplybf,” “crresist,” “rel,” or “response.”

Due Dates in Civil Cases

Responses filed at night tended to be filed on the days due.

Five Randomly Selected Motions

Among these motions, two were uncontested; another filed in a procedurally complex pro se case was not procedurally opposed; another was opposed on the day that it was filed; and the last was responded to before the due date with a motion for an extension of time.

1. *Williams v. Spersflage*, N.D. Iowa No. 1:17-cv-4, D.E. 36 (10/09/2018 16:13): MOTION to Dismiss *for Failure to Prosecute and Follow a Court Order* by Respondent William Spersflage Responses due by 10/23/2018. (Attachments: # (1) Brief) (Rogers, Aaron) Modified on 10/10/2018 to edit text. (src). The defendant’s afternoon motion to dismiss a suit filed pro se was denied as moot a little more than one month later, D.E. 38. Apparently the matter was procedurally complex because of the pro se litigant’s failure to timely file necessary documents.

2. *McManemy v. Tierney*, N.D. Iowa No. 3:17-cv-3020, D.E. 47 (05/25/2018 11:40): UNRESISTED Motion for Leave to File Summary Judgment Reply Pleadings Under Seal Pursuant to the July 24, 2017 Protective Order by Defendants Jennifer Becker, Butler County, Jennifer Degroote, John/Jane Doe(s), Jason Johnson, Curt Lubben, Karson Roose, Bruce Tierney, Dewayne Viet, Kiley Winterberg (Lucas, Catherine). The uncontested motion was filed at 11:40 a.m. and granted at 12:59 p.m. on the day that it was filed, D.E. 48 (docket text).

3. *Fairlie v. Transamerica Life Insurance Company*, N.D. Iowa No. 1:18-cv-32, D.E. 27 (08/13/2018 14:34): UNRESISTED Motion for Protective Order by Plaintiff Suzanne Fairlie (Attachment # (1) Text of Proposed Order) (Kyle, Thomas) Modified text on 08/14/2018 (kfs). The court issued a stipulated protective order, D.E. 28, one day after the uncontested motion was filed.

4. *Fairlie v. Transamerica Life Insurance Company*, N.D. Iowa No. 1:18-cv-32, D.E. 34 (10/19/2018 15:16): MOTION to Stay *Discovery and Case Proceedings Due to Proposed National Class Action Settlement* by Defendants Transamerica Life Insurance Company, Transamerica Premier Life Insurance Company (Attachments: # (1) Brief, # (2) Exhibit Preliminary Approval Or-

der, # (3) Exhibit Notice of 30(b)(6) Deposition) (Smelley, Hutson). Opposition to the motion was filed at 6:38 p.m. on the day that the 3:16 p.m. motion was filed, D.E. 35. A reply brief was filed at 7:37 p.m. one week later, D.E. 36.

5. *Hayes v. United States of America*, N.D. Iowa No. 5:18-cv-4046, D.E. 22 (10/12/2018 16:33): Amended MOTION to Vacate, Set Aside or Correct Sentence (2255) (Criminal Action CR14-4082) filed by Brandon Lee Hayes. (Goff, Shelley). Ten days after filing an afternoon habeas corpus motion, the petitioner filed afternoon supporting material, D.E. 25. Six days before a response was due, the government filed an uncontested afternoon motion for an extension of time, D.E. 27.

Five Randomly Selected Nighttime Responses

Three responses were filed at night on the days due, one was filed at night a day early, and another was filed at night on Monday when due the previous Saturday.

1. *Wollesen v. Wixted, Inc. et al*, N.D. Iowa No. 5:16-cv-4012, D.E. 342 (07/17/2018 23:55): RESISTANCE to Motion re [324] MOTION Leave to Take Depositions in Excess of the Federal Rules' Presumptive Limit filed by Daniel Mark Gardiner, Dennis Gardiner, Gardiner Thomsen PC. (MacEntee, Barry). The 11:55 p.m. opposition was filed on the day that it was due pursuant to the court's schedule, D.E. 335, three weeks after an afternoon motion was filed, D.E. 324.

2. *CRST Expedited, Inc v. Swift Transportation Co of Arizona, LLC*, N.D. Iowa No. 1:17-cv-25, D.E. 79 (08/02/2018 23:54): Response to Motion re [72] MOTION for a Rule 16 Pretrial/Scheduling Conference to Address Discovery and Depositions filed by CRST Expedited, Inc. (Attachments: # (1) Exhibit 1, # (2) Exhibit 2) (Visser, Kevin). The opposition was filed at 8:32 p.m. one week after a 6:07 p.m. motion was filed, D.E. 72, and the night before the response was due pursuant to the court's briefing order, D.E. 73.

3. *Braggs v. Bartruff*, N.D. Iowa No. 1:17-cv-74, D.E. 14 (04/02/2018 22:55): PETITIONER'S REPLY BRIEF re [1] Petition for Writ of Habeas Corpus filed by Bruce Marcel Braggs, III. (Dickey, Gary) Modified on 4/3/2018 to edit text. (src). The habeas corpus petition was filed on June 26, 2017, D.E. 1, and the court set a briefing schedule about three months later (eighty-seven days), D.E. 10. The petitioner's brief was due on Tuesday, December 19, and it was filed that day, D.E. 12. The opposition brief was due sixty days later—on Saturday, February 17, 2018—and it was filed on the afternoon before that, D.E. 13. The reply brief was due six weeks after the opposition brief—on Saturday, March 31—and it was filed at 10:55 p.m. on Monday.

4. *Reed v. Schneider Electric USA, Inc.*, N.D. Iowa No. 1:18-cv-95, D.E. 28 (11/01/2018 21:21): BRIEF in Opposition re [20] MOTION to Dismiss filed by Jennifer Edson, Marion Reed, Randy Reed. (Hendler, Scott). The 9:21 p.m. opposition brief was filed on the night that it was due pursuant to the court's granting an uncontested motion for extension of time to respond, D.E. 22 (docket text).

5. *Cosby v. Illinois Central Railroad Company*, N.D. Iowa No. 6:18-cv-2040, D.E. 31 (07/31/2018 20:32): REPLY to Response to Motion re [15] MOTION to Dismiss for Failure to State a Claim filed by David Hill. (Bubach, Kellen). The 8:32 p.m. reply brief was filed one week after an afternoon opposition brief, D.E. 28, which was filed two weeks after an afternoon motion, D.E. 15.

Due Dates in Criminal Cases

Responses, when filed, tended to be filed one week after the motion was filed.

Five Randomly Selected Motions

Two motions were uncontested and granted on the days that they were filed. One motion was resisted three days after it was filed, and another was resisted in the afternoon one week after the evening motion was filed. A motion for pretrial release was denied at a hearing one week later.

1. *United States v. Chapman*, N.D. Iowa No. 1:09-cr-37, D.E. 64 (08/06/2018 16:03): MOTION to Cancel Debtor Exam by USA as to Keith Chapman. (McLaughlin, Martin). Because the defendant agreed to provide the requested financial information by August 10, the government moved to cancel the judgment debtor exam, and the court granted the afternoon motion on the day that it was filed, D.E. 65 (docket text).

2. *United States v. Nevarez-Carreon*, N.D. Iowa No. 2:17-cr-1025, D.E. 32 (04/24/2018 19:32): MOTION for Departure—*Downward Variance* by Fernando Nevarez-Carreon. (Attachments: # (1) Brief Sentencing Memorandum) (Spies, Leon). The government's afternoon resistance to the motion was filed one week after the 7:32 p.m. motion, D.E. 33.

3. *United States v. Rivera-Cobo*, N.D. Iowa No. 1:18-cr-12, D.E. 12 (03/16/2018 09:14): MOTION Pretrial Release (*Hearing Requested*) by Francisco Rivera-Cobo. (Attachments: # (1) Brief in Support of Pretrial Release, # (2) Exhibit in Support of Pretrial Release) (Hathaway, John). The hearing on the defendant's motion for pretrial release was held one week after morning motion and denied, D.E. 14, 15.

4. *United States v. Bayardo Chan*, N.D. Iowa No. 2:18-cr-1002-5, D.E. 276 (11/29/2018 11:25): MOTION for Extension of Time to Object to Presentence Investigation Report *Unresisted Second motion for Extension of time to file objections* by Mauricio Eduardo Bayardo Chan. (Erdahl, Clemens). The uncontested late-morning motion was granted on the day that it was filed, D.E. 277 (docket text).

5. *United States v. Mattson*, N.D. Iowa No. 5:18-cr-4043, D.E. 17 (07/24/2018 10:17): MOTION to Suppress by Travis Wayne Mattson. (Attachments: # (1) Brief) (Greer, John) (Main Document 17 and Attachment 1 replaced on 7/24/2018) (des). Resistance to the motion was filed three mornings later, D.E. 22. The magistrate judge recommended denial of the motion six weeks after that, D.E. 38

Five Randomly Selected Nighttime Responses

Four nighttime responses were each filed one week after afternoon motions, and one nighttime response was filed six days after an afternoon motion.

1. *United States v. Davies*, N.D. Iowa No. 1:17-cr-26, D.E. 40 (07/19/2018 20:01): RESISTANCE by USA as to Defendant Christopher Matthew Davies re [34] MOTION for Variance—*Downward* (Vavricek, Timothy). The opposition was filed at 8:01 p.m. one week after an afternoon motion, D.E. 34.

2. *United States v. Martinez*, N.D. Iowa No. 6:17-cr-2022-1, D.E. 135 (06/05/2018 20:03): RESISTANCE by USA as to Defendant Juan Carlos Martinez re [125] MOTION for Variance—*Downward* (Williams, Lisa). The 8:03 p.m. opposition was filed six days after an afternoon motion, D.E. 125.

3. *United States v. Campbell*, N.D. Iowa No. 6:17-cr-2045-1, D.E. 341 (06/18/2018 21:54): BRIEF in Opposition by USA as to Defendant Alston Ray Campbell, Jr re [321] MOTION for Hearing/Oral Argument *Re: Motion to Lift or Modify No-Contact/Separation Order Between Family Members* (Nydle, Emily). The 9:54 p.m. opposition was filed one week after an afternoon motion, D.E. 321.

4. *United States v. Cinkan*, N.D. Iowa No. 1:18-cr-53, D.E. 68 (12/11/2018 23:22): RESISTANCE by USA as to Defendant Justin Michael Cinkan re [66] MOTION for New Trial (Attachments: # (1) Brief) (Chatham, Dan). The 9:22 p.m. opposition was filed one week after an afternoon motion, D.E. 66.

5. *United States v. Adams*, N.D. Iowa No. 1:18-cr-86, D.E. 20 (12/20/2018 20:25): RESISTANCE by USA as to Defendant Rossi Lorathio Adams, II re [18] MOTION to Dismiss *Count 1 of the Indictment* (Vavricek, Timothy). The 8:25 p.m. opposition was filed one week after an afternoon motion, D.E. 18.

The District Court for the Southern District of Iowa

Responses are due two weeks after the motion is served, and reply briefs, when necessary, are due one week after that. Docket entries typically state due dates for responses.

Responses generally were filed on the days that they were due.

Motions were coded “motion,” “crmotion,” or “mot2255.” Responses were coded “resp,” “respm,” “respm-cr,” or “crrespm” or coded “respoth” and “respp.”

Due Dates in Civil Cases

Response deadlines were specified in docket text. Responses generally were filed on the days that they were due. One defense response in a criminal case was filed on the night before it was due.

Five Randomly Selected Motions

Three pro hac vice motions were promptly granted. A motion for extension of time was granted without response a few hours after it was filed. A summary judgment motion was responded to during business hours on the day that the response was due.

1. *United States of America v. Ewoltdt*, S.D. Iowa No. 4:17-cv-406, D.E. 4 (02/28/2018 12:33): MOTION for Extension of Time to File *for service* by United States of America. Motions referred to Stephen B. Jackson, Jr. Responses due by 3/14/2018. If service was made under FRCP 5(b)(2)(C) (mail), (D) (leaving with the clerk of court), or (F) (by delivering by other means consented to in writing), an additional three days is added after the period would otherwise expire under FRCP 6(a). The additional three days does not apply to service done electronically. (Luxa, Mary). The motion was granted without response on the day that the motion was filed, about four-and-a-half hours later, D.E. 5.

2. *Central Iowa Carpenters Pension Plan Trust Fund v. Mendez*, S.D. Iowa No. 4:18-cv-2, D.E. 16 (06/13/2018 17:02): MOTION for Writ (*Praecipe*) by Central Iowa Carpenters Money Purchase Plan, Central Iowa Carpenters Pension Plan Trust Fund, Brian Ewing, Marshall G. Linn, III. Motions referred to Celeste F. Bremer. (Attachments: # (1) Text of Proposed Order Proposed writ) (Sollars, Bradley). The pro hac vice motion was granted one day later, D.E. 4.

3. *Clauss v. Gulf Coast Western*, S.D. Iowa No. 4:18-cv-22, D.E. 3 (01/31/2018 11:46): First MOTION for Summary Judgment by Gulf Coast Western, L.L.C. Responses due by 2/21/2018. If service was made under FRCP 5(b)(2)(C) (mail), (D) (leaving with the clerk of court), or (F) (by delivering by other means consented to in writing), an additional three days is added after the period would otherwise expire under FRCP 6(a). The additional three days does not apply to service done electronically. (Attachments: # (1) Brief in Support, # (2) Statement of Material Facts, # (3) Appendix, # (4) Attachments to Appendix) (Thompson, Stanley). The opposition was filed at 10:04 a.m. on the day that it was due, three weeks after the motion, D.E. 8. The reply was due and filed one week after that, at 3:46 p.m., D.E. 12. The court granted summary judgment three-and-a-half months later, D.E. 20.

4. *Guy v. Ford Storage & Moving, Co.*, S.D. Iowa No. 4:18-cv-216, D.E. 3 (07/10/2018 09:08): MOTION for Leave to Appear Pro Hac Vice Receipt Number: 0863-3540840 Fee paid in the amount of \$75 by Jonathan Guy. (Fundora, Camille). The pro hac vice motion was granted six days later, D.E. 4.

5. *Allied Property and Casualty Insurance Company v. Gree USA, Inc.*, S.D. Iowa No. 4:18-cv-275, D.E. 5 (09/14/2018 11:06): MOTION for Leave to Appear Pro Hac Vice Receipt Number: 0863-3597210 Fee paid in the amount of \$75 by Allied Property and Casualty Insurance Company, Betty Davis-Cra-craft. (Driscoll, Kevin). The pro hac vice motion was granted on the day that it was filed, D.E. 7.

Five Randomly Selected Nighttime Responses

Three oppositions and a reply were filed at night on the days that they were due. A nighttime reply supporting an appeal of a magistrate judge decision was filed one week after the response. The due date was not apparent on the docket sheet.

1. *Thayer v. Planned Parenthood of the Heartland, Inc.*, S.D. Iowa No. 4:11-cv-129, D.E. 275 (08/27/2018 21:52): REPLY re [271] APPEAL OF

MAGISTRATE JUDGE DECISION to District Court by Planned Parenthood of the Heartland, Inc. re [264] Order, [265] Protective Order filed by Planned Parenthood of the Heartland, Inc. (Rodriguez, Kristen). The response to the magistrate judge appeal was filed at 2:09 p.m., D.E. 273, two weeks after the appeal, which was filed at 9:16 p.m., D.E. 271. The 9:52 p.m. reply was filed one week after the response.

2. *Silverman v. Navient Solutions, LLC*, S.D. Iowa No. 3:16-cv-113, D.E. 71 (07/16/2018 23:58): REPLY re [65] MOTION to Substitute Party, *to Join Party Plaintiffs, or in the alternative, to Consolidate Cases* filed by Judy Silverman. (Mitchell, David). The 11:58 p.m. reply was filed two weeks after a 6:39 p.m. opposition, D.E. 66. The reply was originally due one week after the opposition, but the court granted a one-week extension, D.E. 69. The opposition was filed on the day that it was due, two weeks after the 11:51 p.m. motion.

3. *Fitzpatrick v. Timmerman*, S.D. Iowa No. 3:17-cv-68, D.E. 18 (03/30/2018 22:48): RESPONSE to Motion re [12] Amended MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM *Resistance to Amended Motion to Dismiss* filed by June Fitzpatrick. Replies due by 4/6/2018. (Graham, William). A motion to dismiss the complaint for failure to state a claim was filed at 1:46 p.m. on February 12, with an opposition due two weeks later, D.E. 6. The court granted, D.E. 11, an unopposed motion for a two-week extension of time, D.E. 10, on the day that the opposition was due. The defendants filed a 1:59 p.m. amended motion four days after the extension order, with a due date of March 16, D.E. 12. Thirteen days after the opposition was due, the court granted, D.E. 16, a consent motion for an extension of time to respond in three days, acknowledging a failure to put the response deadline in counsel's calendar, D.E. 15. The opposition was filed at 10:48 p.m. on the day that it was due. A reply was filed at 2:38 p.m. six days later, on the day before it was due, D.E. 19.

4. *Neiman v. Navient Solutions, LLC*, S.D. Iowa No. 3:18-cv-12, D.E. 29 (09/27/2018 23:08): RESPONSE to Motion re [22] MOTION for Judgment on the Pleadings filed by Donald F Neiman. Replies due by 10/4/2018. (Gandy, Paul). The 11:08 p.m. opposition was filed four weeks after a 3:45 p.m. motion, D.E. 22. The opposition was originally due two weeks after the motion, but the court granted a two-week extension of the due date, D.E. 28. A reply was filed at 3:32 p.m. on the day that it was due, one week after the opposition, D.E. 34.

5. *Larimer v. State of Iowa*, S.D. Iowa No. 4:18-cv-203, D.E. 11 (09/07/2018 23:39): RESPONSE to Motion re [7] MOTION to Dismiss *Section 2254 Habeas Petition* filed by Eric Burdette Larimer. Replies due by 9/14/2018. (Messamer, Gina). The 11:39 p.m. opposition was filed five weeks after an 11:07 a.m. motion, three weeks after the original due date. A 12:42 p.m. motion for a three-week extension of time, D.E. 9, was filed and granted, D.E. 10, on the original due date. The reason for the delay was difficulty communicating with the habeas petitioner.

Due Dates in Criminal Cases

Three nighttime government responses were filed on the days due after extensions of time, and two nighttime defense responses were filed on time. No responses were filed to five randomly selected motions.

Five Randomly Selected Motions

Three motions were unresisted, and one may have been an error. The other motion was granted on the next day without a response.

1. *United States v. Aurthur*, S.D. Iowa No. 3:16-cr-72, D.E. 57 (02/16/2018 15:23): First MOTION for Extension of *Time to File Brief* by USA as to Tosha Marie Aurthur. Motions referred to Stephen B. Jackson, Jr. Responses due by 2/23/2018. If service was made under FRCP 5(b)(2)(C) (mail), (D) (leaving with the clerk of court), or (F) (by delivering by other means consented to in writing), an additional three days is added after the period would otherwise expire under FRCP 6(a). The additional three days does not apply to service done electronically. (Cronk, Clifford). “Due to a heavy trial and appellate case-load, the deadline for filing of the [government’s brief in response to the appeal of defendant’s conviction and sentence] was inadvertently missed.” D.E. 57. The motion requested an extension of the deadline to two weeks after the filing of the extension motion. *Id.* The motion was filed more than three months after an appeal was settled, with no docket activity in the interim, and no subsequent docket entries referred to the motion.

2. *United States v. Forrest*, S.D. Iowa No. 4:17-cr-166, D.E. 42 (08/14/2018 15:52): Unresisted MOTION to Continue Sentencing (*No Hearing Necessary*) as to Conor Jack Forrest. Responses due by 8/21/2018. (Parrish, Alfredo). The unresisted motion was granted on the day after it was filed, D.E. 43.

3. *United States v. Crook, Jr.*, S.D. Iowa No. 4:18-cr-57, D.E. 74 (11/13/2018 12:55): Unresisted MOTION for Extension of *Pretrial Motion Deadline* as to Steven Douglas Crook, Jr. Motions referred to Helen C. Adams. Responses due by 11/20/2018. (Whalen, James). The unresisted motion was granted in part and denied in part on the day that it was filed, D.E. 76.

4. *United States v. Williams*, S.D. Iowa No. 4:18-cr-69, D.E. 35 (08/28/2018 16:29): First MOTION to Continue *Reschedule Suppression Hearing* by USA as to Javell Williams. Motions referred to Helen C. Adams. Responses due by 9/4/2018. (Osborne, Jordan). The motion was granted without response on the day after it was filed, D.E. 36.

5. *United States v. Rivas Davila*, S.D. Iowa No. 4:18-cr-115, D.E. 21 (07/16/2018 11:27): Unresisted MOTION to Continue Trial and *Pretrial Deadlines* as to Derian Francisco Rivas Davila. (Herrold, Joseph). The unresisted motion was granted three days after it was filed, D.E. 23.

Five Randomly Selected Nighttime Responses

One defense reply was filed on the night before it was due, and three government responses were filed on the days due after extensions of the deadlines. A

defense opposition to a notice to use evidence was filed three days after the notice and two days before jury voir dire.

1. *United States v. Maupin*, S.D. Iowa No. 3:17-cr-70-9, D.E. 251 (01/31/2018 21:42): RESPONSE in Opposition/Resistance by Oliver Sonny Maupin re [223] MOTION to Sever Defendant Replies due by 2/7/2018. (Pariente, Michael). The defendant's motion to sever his trial was filed in the eleven-defendant case at 1:13 p.m. on January 19, with responses due one week later, D.E. 223. The government's 3:25 p.m. opposition was filed a day before it was due, with a reply due on February 1, D.E. 235. The defendant's reply was filed at 9:42 on the night before it was due, and it was marked in the docket sheet as a response.

2. *United States v. Pineda Ramirez*, S.D. Iowa No. 3:18-cr-7, D.E. 29 (03/29/2018 22:02): RESPONSE in Opposition/Resistance by USA as to Jesus Pineda Ramirez re [26] MOTION to Dismiss *the Indictment*. Replies due by 4/5/2018. (Attachments: # (1) Exhibit Exhibit 1, # (2) Exhibit Exhibit 2, # (3) Exhibit Exhibit 3, # (4) Exhibit Exhibit 4) (Westphal, Richard). The motion to dismiss the illegal reentry indictment was filed at 11:33 a.m. on March 5, and a response was originally due on March 12, D.E. 26. Arguing that the motion "raises multiple legal and factual issues that will require more than the standard seven day response time," the government moved at 1:43 p.m. on March 6 for a seventeen-day extension of time and a continuation of the trial date, D.E. 27. The court granted the motion a week later, D.E. 28. The 10:02 p.m. response was filed on the day that it was due.

3. *United States v. Madden*, S.D. Iowa No. 3:18-cr-10-2, D.E. 91 (09/19/2018 21:05): RESPONSE in Opposition/Resistance by David Andrew Nathaniel Madden *Resistance to [85] Government's Proposed 404(b) Evidence*. Replies due by 9/26/2018. (Mason, Andrea) Modified on 10/1/2018 (tae). The 9:05 p.m. opposition was filed three days after a 2:35 p.m. notice of intent to use evidence on two mobile telephones of controlled substance transactions, D.E. 85. The docket sheet stated that replies were due a week later; jury voir dire began two days before that, D.E. 96, and no reply was docketed. A jury verdict was docketed on the date that replies were due, D.E. 104.

4. *United States v. Madden*, S.D. Iowa No. 3:18-cr-10-2, D.E. 116 (10/24/2018 23:12): RESPONSE in Opposition/Resistance by USA as to David Andrew Nathaniel Madden re [108] MOTION for New Trial. Replies due by 10/31/2018. (Ripley, William). The government's 11:12 p.m. opposition was filed two weeks after a 4:04 p.m. new trial motion, D.E. 108, one week after the original due date. Two days before the original deadline, the court granted a one-week extension, D.E. 115, sought that day because of the government attorney's family emergency, D.E. 114.

5. *United States v. Colizziano*, S.D. Iowa No. 4:18-cr-180-1, D.E. 64 (12/18/2018 21:25): RESPONSE to Motion by USA as to Kitt Carmine Colizziano, Dawn Marie Colizziano re [56] MOTION to Suppress, [57] First MOTION to Suppress Replies due by 12/26/2018. (Attachments: # (1) Exhibit Exhibit 1, # (2) Exhibit Exhibit 1A) (Griess, Jason). The 9:25 p.m. December

18 opposition to a December 3 suppression motion was originally due on December 10, D.E. 57. On December 11, the court granted, D.E. 61, a 4:31 p.m. December 10 motion for a four-day extension of time, D.E. 60. On Monday, December 17, the court granted, D.E. 63, a 2:22 p.m. Friday, December 14, motion for a second four-day extension of time, D.E. 62.

The District Court for the Western District of Michigan

For dispositive motions, responses are due within four weeks of the motion and replies are due within two weeks of the response.

Nighttime responses usually were filed on the days due, but in civil cases one was filed four days early and one was filed one weekday late.

Motions were coded “motion” or “crmotion”; coded “respm” and “brsupp” or “memsupp”; or coded “respm-cr” and “crbrfsup,” “crmemsup,” or “crrespsu.” Responses were coded “resp” or “crrespm”; coded “respm” and “response,” “respopp,” “reply,” “rel,” “sreply,” “affopp,” or “sresponses”; or coded “respm-cr” and “response,” “crrespopp,” “crreply,” “craffopp,” “rel,” or “sreply.”

Due Dates in Civil Cases

Two nighttime responses were filed on the dates due after extensions, one was filed four days early, and one was filed at night one weekday late.

Five Randomly Selected Motions

A summary judgment motion was responded to seventeen days later. The court promptly issued two proposed orders, one designated stipulated, and it granted a motion to withdraw as an attorney. A fifth motion apparently became subject to a bankruptcy stay.

1. *Richlich v. Spectrum Health Systems, Inc.*, W.D. Mich. No. 1:16-cv-1262, D.E. 50 (03/28/2018 09:25): PROPOSED ORDER regarding *to Adjourn Trial* by defendant Spectrum Health Systems, Inc. (Kilbane, Brian). The Wednesday morning proposed order was granted on the following Monday, D.E. 51.

2. *Williams #252766 v. Smith*, W.D. Mich. No. 1:17-cv-130, D.E. 48 (04/27/2018 15:39): BRIEF in support of MOTION for summary judgment [47] filed by John Christiansen, Kirt Dozeman, Meghan Jansen, David Maranka, Willie O. Smith (Attachments: # (1) EExhibit A, # (2) Exhibit B) (Dean, Michael) Modified text on 4/27/2018 (ns). An afternoon summary judgment response followed the afternoon motion by seventeen days, D.E. 51. The motion was granted on February 6, 2019, D.E. 58, approving a July 5, 2018, report and recommendation, D.E. 55.

3. *Doe 04 v. Michigan State University*, W.D. Mich. No. 1:18-cv-377, D.E. 198 (10/10/2018 14:19): MOTION *to Dismiss (re 18-cv-915) Pursuant to Federal Rule of Civil Procedure 12(b)(6)* by defendants John Geddert, Twistars USA, Inc.; (Attachments: # (1) Exhibit Ex A – Statute); this document appears in the following associated cases: 1:17-cv-00029-GJQ-ESC et al. (Getto, Cameron) Modified text on 10/10/2018 (mg). Also filed in *Hutchins v. Michigan State University*, No. 1:18-cv-915, D.E. 57, and in *Denhollander v. Michigan*

State University, No. 1:17-cv-29, D.E. 425. On a Tuesday afternoon twenty days after the October 10 afternoon motion was filed, the parties stipulated to an extension until November 30 for the plaintiffs to respond, D.E. 299. The motion apparently was subject to a bankruptcy stay recognized on April 25, 2019, D.E. 880, 881.

4. *Doe v. Michigan State University*, W.D. Mich. No. 1:18-cv-987, D.E. 41 (10/09/2018 16:46): PROPOSED STIPULATION and ORDER (*re 18-cv-915*) *Allowing Twistars and Geddert to File Overlength Brief* by defendants John Geddert, Twistars USA, Inc.; this document appears in the following associated cases: 1:17-cv-00029-GJQ-ESC et al. (Getto, Cameron) Modified text on 10/15/2018 (mg). The afternoon stipulated proposed order was granted on the next day, D.E. 55.

5. *Doe v. Michigan State University*, W.D. Mich. No. 1:18-cv-1016, D.E. 41 (10/10/2018 17:07): MOTION to withdraw as attorney (*re 18-cv-1047*) by plaintiff Julia Epple; (Attachments: # (1) Attachment Notice of Hearing); this document appears in the following associated cases: 1:17-cv-00029-GJQ-ESC et al. (Hurbis, Steven) Modified text on 10/15/2018 (mg). Modified text on 10/17/2018 (mg). The 5:07 p.m. motion to withdraw as an attorney in the case was granted on the day that the motion was filed, D.E. 48.

Five Randomly Selected Nighttime Responses

Two responses were filed on the dates due after extensions. One reply brief was filed four days early, and one response brief due on a Friday was filed at night on the following Monday. Another nighttime reply brief followed a nighttime opposition brief, following a nighttime motion, all on the same day.

1. *Denhollander et al v. Michigan State University*, W.D. Mich. No. 1:17-cv-29, D.E. 186 (01/19/2018 21:19): RESPONSE in opposition to MOTION to dismiss (105 in 1:17-cv-00254-GJQ-ESC, 29 in 1:17-cv-00676-GJQ-ESC, 114 in 1:17-cv-00222-GJQ-ESC, 14 in 1:17-cv-00684-GJQ-ESC, 101 in 1:17-cv-00257-GJQ-ESC, 101 in 1:17-cv-00244-GJQ-ESC, 103 in 1:17-cv-00288-GJQ-ESC, 96 in 1:17-cv-00349-GJQ-ESC, 153 in 1:17-cv-00029-GJQ-ESC) filed by plaintiff's Lindsey Lemke et al (17-cv-257), Rachael Denhollander et al (17-cv-29); this document appears in the following associated cases: 1:17-cv-00029-GJQ-ESC et al. (Drew, Stephen) Modified text on 1/22/2018 (mg). The 9:19 p.m. opposition, originally due on January 4, 2018, followed a December 7, 2017, dismissal motion, D.E. 153, by forty-three days. In response to a request for an extension of four weeks, the judge granted an extension of fifteen days, D.E. 162 to 163.

2. *Woods v. Progressive Insurance Co.*, W.D. Mich. No. 1:17-cv-281, D.E. 57 (05/29/2018 21:51): REPLY to response to motion [54] filed by Progressive Insurance Co. (Attachments: # (1) Exhibit 4 – May 22, 2018 Declaration of Terrance Dudzenski, # (2) Exhibit 5 – May 22, 2018 Declaration of Deborah Young, # (3) Exhibit 6 – Declaration of Penny Phipps, # (4) Exhibit 7 – Declaration of Kathryn Bludis) (Posner, David). The summary judgment motion was filed at 7:58 p.m., D.E. 54, the response was filed at 8:45 p.m., D.E. 56, and

the reply was filed at 9:51 p.m. Summary judgment was granted one afternoon more than twenty weeks later, D.E. 61.

3. *Alticor Global Holdings Inc. v. American International Specialty Lines Insurance Co.*, W.D. Mich. No. 1:17-cv-388, D.E. 103 (04/26/2018 22:42): RESPONSE in opposition to MOTION for Summary Judgment by defendant National Union Fire Insurance Company of Pittsburgh, PA [64] filed by Alticor Global Holdings Inc., Alticor Inc., Amway Corp., Amway International, Inc. (Attachments: # (1) Index of Exhibits, # (2) Exhibit 1 – 2006/2007 ACE American Primary General Liability Policy, # (3) Exhibit 2 – 2006/2007 National Union Commercial Umbrella Liability Policy, # (4) Exhibit 3 – 2007/2008 National Union Commercial Umbrella Liability Policy, # (5) Exhibit 4 – Declaration of Scott Gray, # (6) Exhibit 5 – July 11, 2013 ACE American Acknowledgement Letter, # (7) Exhibit 6 – November 26, 2013 National Union Letter, # (8) Exhibit 7 – January 5, 2016 National Union Letter, # (9) Exhibit 8 – April 7, 2016 National Union E-mail, # (10) Exhibit 9 – October 10, 2016 E-mail to National Union Enclosing Mediated Settlement Term Sheet, # (11) Exhibit 10 – November 21, 2016 E-mail to National Union Enclosing Draft Settlement Agreements, # (12) Exhibit January 2, 2017 E-mail to National Union Enclosing Executed Settlement Agreements and Confirming Payment of Settlement Monies, # (13) Exhibit 12 – January 19, 2017 E-mail to National Union Enclosing Order of Dismissal) (Wilson, James) Modified text on 4/27/2018 (clw). The 10:42 p.m. summary judgment opposition followed an afternoon motion, D.E. 64, by seven weeks. Opposition briefs for cross-motions for summary judgment originally were due four weeks after the motions, but the court granted the parties extensions, initially of two weeks, D.E. 92, and then of an additional week, D.E. 100.

4. *Jamison v. Wolfe*, W.D. Mich. No. 1:18-cv-233, D.E. 21 (05/31/2018 22:54): REPLY to response to motion [14] to Dismiss or for Summary Judgment with Attachment filed by Catherine L. Wolfe (Wolfe, Catherine) Modified text on 6/1/2018 (pjw). A summary judgment motion was filed at 5:14 p.m. on May 3, D.E. 14, and opposed fewer than three weeks later, on the afternoon of May 21, D.E. 20. The 10:54 p.m. reply followed the response by ten days.

5. *Nyitray v. LaFranca*, W.D. Mich. No. 1:18-cv-847, D.E. 14 (12/10/2018 23:26): RESPONSE TO MOTION to dismiss for failure to state a claim [10] filed by Isea Marichalar, David L. Nyitray, III (Attachments: # (1) Exhibit A, # (2) Exhibit B) (Alvarez, Robert). The parties stipulated, D.E. 12 and 13, to a thirty-day extension for a response to a 9:04 p.m. October 9 dismissal motion, extending the deadline to Friday, December 7, D.E. 10. The late response was filed at 11:26 p.m. on Monday.

Due Dates in Criminal Cases

Nighttime responses were filed on the dates that they were due.

Five Randomly Selected Motions

A suppression motion was responded to four weeks after the motion, and a reply filed another two weeks later. Two extension motions were granted on

the same day or on the next court day. A Criminal Justice Act payment motion was withdrawn, and an objection to the continuation of a criminal trial was denied six days after the motion.

1. *United States v. Gibson*, W.D. Mich. No. 1:16-cr-37-1, D.E. 1304 (07/11/2018 15:33): SECOND MOTION for extension of time to file response/reply as to Order on Motion for Extension of Time to File Response/Reply [1295] by USA as to Derrick J. Gibson (Attachments: # (1) Certificate of Service) (Shekmer, B.). In this thirty-four-defendant criminal case, the afternoon motion for an extension of time was granted on the day after the motion was filed, D.E. 1305.

2. *United States v. Atkinson*, W.D. Mich. No. 1:17-cr-193-18, D.E. 302 (04/19/2018 13:24): OBJECTION TO CONTINUANCE OF TRIAL by Erika Atkinson (Howard, Sarah). In the multidefendant case, one defendant objected to continuation of the trial, at least as to her, and her afternoon motion was denied six days later, D.E. 317.

3. *United States v. Hancock*, W.D. Mich. No. 2:18-cr-21, D.E. 31 (12/14/2018 13:36): UNOPPOSED MOTION for extension of time to file *plea agreement* by Bradley Joseph Hancock (LaCosse (FPD), Elizabeth). The Friday afternoon unopposed motion for an extension of time was granted on Monday, D.E. 33.

4. *United States v. Wiley*, W.D. Mich. No. 1:18-cr-29, D.E. 44 (07/06/2018 09:24): BRIEF in support by Michael Lamont Wiley re THIRD MOTION for release of funds [43] (O'Keefe, Patrick). The morning motion to receive Criminal Justice Act funds to pay for an expert witness was withdrawn nineteen days after the motion was filed, D.E. 122.

5. *United States v. Starr*, W.D. Mich. No. 1:18-cr-167-14, D.E. 398 (10/26/2018 07:43): BRIEF in support by Quincy Delon Lofton re MOTION for joinder in Howard Mayfield's Motion to Suppress Wiretap Evidence [397] (Boyer, Joseph) Modified text on 10/29/2018 (pjw). The Friday morning motion to join a suppression motion was filed twenty-four days after the original motion, D.E. 361, and an opposition was filed on the Tuesday afternoon following the joinder motion, four weeks after the original motion, D.E. 420. An afternoon reply was filed two weeks after that, on November 14, 2018, D.E. 427. The motion was denied on January 22, 2019, D.E. 497,

Five Randomly Selected Nighttime Responses

Four nighttime responses were filed on the dates due by court order, and the fifth was filed four weeks after the motion.

1. *United States v. Blomquist*, W.D. Mich. No. 2:17-cr-31, D.E. 74 (10/26/2018 23:56): RESPONSE to motion by USA as to Lee Edward Blomquist re MOTION for hearing (*evidentiary*), *enjoin the prosecution and to dismiss the indictment* [62] (Lochner, Paul). The 11:56 p.m. opposition was filed forty-two days after a 5:18 p.m. motion filed, D.E. 62. The court originally set the due date for the response at October 12, D.E. 70, but on October 11 the government filed an unopposed motion for a two-week extension, D.E. 71,

which the court granted, D.E. 73. So the opposition was filed on the day that it was due.

2. *United States v. Cox*, W.D. Mich. No. 1:17-cr-193-21, D.E. 489 (07/23/2018 20:20): RESPONSE to motion by USA as to Aaron Leon Cox re MOTION to dismiss *indictment due to vindictive prosecution* [433] (Baker, Stephen). The 8:20 p.m. opposition was filed four weeks after a 6:29 p.m. motion, D.E. 433. The motion was denied nine days after the response, D.E. 523.

3. *United States v. Urbina*, W.D. Mich. No. 1:18-cr-51-1, D.E. 156 (10/11/2018 20:15): RESPONSE in opposition by Richardo Leodoro Urbina re MOTION in limine [127] (Upshaw, Geoffrey). The 8:15 p.m. October 11 nighttime in limine response was filed on the day that it was due pursuant to a scheduling order, D.D. 148, twenty-nine days after an afternoon motion, D.E. 127, which was granted in April 2019, D.E. 242.

4. *United States v. Trevino*, W.D. Mich. No. 1:18-cr-166-1, D.E. 81 (11/20/2018 21:14): RESPONSE in opposition by USA as to Daniel Dario Trevino re MOTION to suppress #3 – 919 Call Street [68] (Fauson, Joel). A suppression motion was filed at 7:49 p.m. on October 15, and the court granted the government an extension until November 20 to respond, D.E. 79, so the 9:14 p.m. opposition was filed on the day that it was due. The court denied the motion December 12, D.E. 85.

5. *United States v. Trevino*, W.D. Mich. No. 1:18-cr-166-1, D.E. 82 (11/20/2018 22:26): RESPONSE in opposition by USA as to Daniel Dario Trevino re MOTION to suppress #4 (1523 S. Cedar, 3308 S. Cedar and 611 Maplehill – 2016) [70] (Fauson, Joel). A suppression motion was filed at 11:54 p.m. on October 15, and the court granted the government an extension until November 20 to respond, D.E. 79, so the 10:26 p.m. opposition was filed on the day that it was due. The court denied the motion on January 2, 2019, D.E. 94.

The District Court for the District of the Northern Mariana Islands

According to local rules, motions are heard on the fourth Thursday after filing, motion responses are due by the close of business on Thursday two full weeks after the motion is filed and replies are due on Thursday of the following week. The data, however, did not follow this pattern.

Motions were coded “motion” or “crmotion” or coded “respm” and “memosupp.” Responses were coded “resp” or “crrespm”; coded “respm” and “oppmot,” “reply,” “respopp,” “response,” “affopp,” or “respsupp”; or coded “respm-cr” and “creply,” “oppmot,” or “response.”

Due Dates in Civil Cases

Motions are frequently unopposed. When responses are filed, they do not adhere to a consistent time schedule or generally follow the Thursday rules.

Five Randomly Selected Motions

Each of three stipulations and two other motions was resolved by the court either on the day that it was filed or on the following day.

1. *Alvarez v. Seahorse, Inc.*, D.N.M.I. No. 1:16-cv-14, D.E. 37 (07/03/2018 12:29): STIPULATION of Dismissal by Manuel Alvarez Mark A. Scoggins appearing for Plaintiff Manuel Alvarez (Scoggins, Mark). The afternoon stipulated dismissal was granted on the day that it was filed, D.E. 38.

2. *Tinian Women Association v. United States Department of the Navy*, D.N.M.I. No. 1:16-cv-22, D.E. 62 (02/22/2018 12:21): DEFENDANT'S MOTION for Clarification of the Court's February 12, 2018 Order re [58] Decision and Order. Joshua P. Wilson appearing for Defendants Ashton Carter, Ray Mabus, United States Department of Defense, United States Department of the Navy (Wilson, Joshua). The court addressed the afternoon motion at a status conference on the following day, D.E. 64.

3. *Tinian Women Association v. United States Department of the Navy*, D.N.M.I. No. 1:16-cv-22, D.E. 96 (08/31/2018 11:25): MOTION to Alter Judgment David Lane Henkin appearing for Plaintiffs Center for Biological Diversity, Guardians of Gani, PaganWatch, Tinian Women Association (Attachments: # (1) Memorandum in Support, # (2) Stipulation Re: Certified Administrative Record, # (3) Certificate of Service) (Henkin, David). The court granted the morning motion to amend a footnote on the day that the motion was filed, D.E. 97.

4. *First Hawaiian Bank v. Chong*, D.N.M.I. No. 1:16-cv-26, D.E. 48 (02/27/2018 09:53): STIPULATION *Re: Status Conference* by Alexander Chin Hak Chong Bruce L. Berline appearing for Cross Claimant Alexander Chin Hak Chong (Berline, Bruce). The court granted the morning stipulated motion to take a status conference off-calendar on the day that the stipulation was filed, D.E. 49.

5. *Yaquinto v. Commonwealth Utilities Corporation*, D.N.M.I. No. 1:17-cv-23, D.E. 22 (11/16/2018 10:35): STIPULATION by Matthew J Yaquinto Joseph E. Horey appearing for Plaintiff Matthew J Yaquinto, Counter Defendant Matthew J Yaquinto (Horey, Joseph). The morning stipulated terms of a deposition were granted on the day that they were filed, D.E. 23.

Five Randomly Selected Nighttime Responses

Two opposition briefs were filed from two weeks and two days to three weeks and two days after motions. Three reply briefs were filed from one week and two days to two weeks after opposition briefs.

1. *Hillbroom v. Lujan*, D.N.M.I. No. 1:10-cv-9, D.E. 366 (11/27/2018 21:22): REPLY to Response to Motion re [365] Opposition to Motion, *to Re-quire Barry J. Israel to be Deposed in Saipan* filed by Junior Larry Hillbroom. (Attachments: # (1) Declaration of Loc Xuan Le, # (2) Exhibit, # (3) Exhibit, # (4) Exhibit, # (5) Exhibit, # (6) Exhibit, # (7) Exhibit, # (8) Exhibit) (Dimitruk, Rachel). The 9:22 p.m. Tuesday reply brief was filed two weeks before the hearing, D.E. 367, and ten days after a Saturday morning opposition, D.E. 365,

which was filed eleven days after a 5:59 p.m. Tuesday motion to compel, D.E. 364.

2. *Zajradhara v. Commonwealth Utilities Corporation*, D.N.M.I. No. 1:15-cv-7, D.E. 52 (08/04/2018 21:27): AFFIDAVIT in Opposition re [45] First MOTION to Compel *Declaration of Richard Cano* filed by Commonwealth Utilities Corporation. (Sirok, James). Opposition documents were filed from 9:09 p.m. to 9:40 p.m. on a Saturday, two weeks and two days after a Thursday 9:28 p.m. motion to compel, D.E. 45. The court had granted, D.E. 48, on the day that it was sought, D.E. 46, a two-day extension of time to respond to the motion.

3. *Tinian Women Association v. United States Department of the Navy*, D.N.M.I. No. 1:16-cv-22, D.E. 83 (07/06/2018 22:44): OPPOSITION to Motion re [81] Motion for Summary Judgment filed by Center for Biological Diversity, Guardians of Gani, PaganWatch, Tinian Women Association. (Attachments: # (1) Supplemental Declaration of David L. Henkin, # (2) Exhibit 76, # (3) Exhibit 77, # (4) Exhibit 78, # (5) Exhibit 79, # (6) Exhibit 80, # (7) Exhibit 81, # (8) Exhibit 82, # (9) Exhibit 83, # (10) Exhibit 84, # (11) Exhibit 85, # (12) Exhibit 86, # (13) Exhibit 87, # (14) Exhibit 88, # (15) Exhibit 89, Stricken Pursuant to Order re [87]. # (16) Exhibit 90, # (17) Exhibit 91, # (18) Exhibit 92, # (19) Certificate of Service) (Henkin, David) Modified on 7/17/2018 (BTC). The 10:44 p.m. Friday opposition brief was filed three weeks and two days after an 11:47 p.m. summary judgment motion, D.E. 81.

4. *Tinian Women Association v. United States Department of the Navy*, D.N.M.I. No. 1:16-cv-22, D.E. 89 (07/20/2018 23:54): Plaintiff's REPLY in Support of Their Motion for Summary Judgment; Second Supplemental Declaration of David L. Henkin; Exhibit "93" Certificate of Service re [82] Response in Opposition to Motion for Summary Judgment filed by Center for Biological Diversity, Guardians of Gani, PaganWatch, Tinian Women Association. (Attachments: # (1) Second Supplemental Declaration of David L. Henkin, # (2) Exhibit 93, # (3) Certificate of Service) (Henkin, David). The 11:54 p.m. Friday summary judgment reply brief was filed twenty days before the hearing, D.E. 93, and two weeks after a late-morning response brief, D.E. 82, which was filed five weeks after an afternoon motion, D.E. 80.

5. *Monshi v. Bhuiyan dba Island Protection Service*, D.N.M.I. No. 1:18-cv-2, D.E. 12 (04/13/2018 22:13): REPLY to Response to Motion re [8] Response in Opposition to Motion *Defendant's Reply to Plaintiffs' Opposition to Defendant's Motion for Summary Judgment* filed by MD Nurul Islam Bhuiyan. (Attachments: # (1) Exhibit Declaration of Md. Nurul Islam Bhuiyan, # (2) Exhibit Annual Corporation Report of Pacific Summit Corporation, # (3) Exhibit Annual Corporation Report of Pacific Taxi Corporation) (King, Janet). The 10:13 p.m. Friday reply brief was filed nine days after an 11:57 p.m. opposition brief, D.E. 8, which was filed two weeks after a 9:31 p.m. summary judgment motion, D.E. 5.

Due Dates in Criminal Cases

Written motions are typically granted without opposition or after an oral hearing.

Five Randomly Selected Motions

Four unopposed motions were each granted on the day that it was filed or on the following day. A detention motion was granted a week later at a hearing.

1. *United States v. Guo*, D.N.M.I. No. 1:17-cr-11-2, D.E. 82 (05/14/2018 09:51): MOTION to Seal Document *MOTION FOR LEAVE TO FILE DOCUMENT UNDER SEAL* by Wencai Guo. (Torres, Robert). The morning sealing motion was granted on the day that it was filed, D.E. 83.

2. *United States v. Rahman*, D.N.M.I. No. 1:17-cr-19, D.E. 24 (03/13/2018 15:34): MOTION to Set Change of Plea Hearing by USA as to Bernieann Taitingfong Rahman. (O'Malley, Eric). The hearing was set for the following day, as requested by the government, *see* D.E. 25 (minutes).

3. *United States v. Repeki*, D.N.M.I. No. 1:18-cr-2-2, D.E. 9 (02/27/2018 10:00): MOTION for Order of Detention Pending Trial by USA as to Eugene Blas Repeki. (Backe, Garth). In this two-defendant case, motions for detention were filed on the day of initial appearances, *see* D.E. 14 (minutes), one day after the filing of a criminal complaint, D.E. 1. The motions were granted at a hearing one week after they were filed, D.E. 19 (minutes), 20, 21.

4. *United States v. Sablan*, D.N.M.I. No. 1:18-cr-7, D.E. 10 (04/30/2018 17:20): UNOPPOSED MOTION to Continue Deadline for Filing Defendant's Reply to the Government's Response to Defendant's Motion to Suppress and Motion to Compel Discovery. (King, Janet). The unopposed 5:20 p.m. motion was granted on the following day, D.E. 11.

5. *United States v. Tomokiyo*, D.N.M.I. No. 1:18-cr-11-2, D.E. 25 (08/07/2018 16:56): STIPULATED Motion to Continue Trial, Vacate Trial, Motions and Pretrial Conference Dates, and Find Excludable Delay filed by Mizanur Khan. (Thompson, Colin). The afternoon stipulated motion was granted at a pretrial conference on the following day, D.E. 28

All Nighttime Responses

In 2018, there were two nighttime responses filed in criminal cases. One was a reply brief filed one week after the opposition brief in a case with six defendants (applicable to all six defendants), and one was an opposition brief filed four days after the motion in a case with two defendants (applicable to one defendant).

1. *United States v. Rahman*, D.N.M.I. No. 1:17-cr-1, D.E. 282 (01/02/2018 21:59): REPLY by MD. Rafiqul Islam as to Muksedur Rahman, MD. Rafiqul Islam, Zeaur Rahman Dalu, David Trung Quoc Phan, Shahinur Akter, Analyn Nunez re [275] MOTION for Acquittal *and for New Trial* (Berline, Bruce). The 9:59 p.m. Tuesday reply brief followed by one week an opposition brief, D.E. 280, which followed by twenty-six days the motion, D.E. 275.

2. *United States v. Li*, D.N.M.I. No. 1:18-cr-1-2, D.E. 58 (09/04/2018 22:10): OPPOSITION to Motion by Liang Li re [48] MOTION to Deny Defendant Acceptance of Responsibility Credit (Attachments: # (1) Exhibit A, # (2) Exhibit A1, # (3) Exhibit A2, # (4) Exhibit A3, # (5) Exhibit B, # (6) Exhibit C, # (7) Exhibit D, # (8) Exhibit E) (King, Janet). The 9:10 p.m. Tuesday opposition brief followed by four days an afternoon motion, D.E. 48. Sentencing occurred ten days after the motion opposition, D.E. 74 (minutes).

The District Court for the Middle District of Pennsylvania

Summary judgment responses are due three weeks after the motion brief, and other responses are due two weeks after the motion brief.

Nighttime response briefs were often filed on the days that they were due, but sometimes, it appears, they were filed early.

Motions were coded “motion,” “crmotion,” or “mot2255”; coded “respm” and “respsupp,” “respsups,” “stfacts,” or “affsupp”; or coded “respm-cr” and “crrespsu.” Responses were coded “resp”; coded “respm” and “respopp,” “reply,” “respopps,” “ssrplybr,” “rel,” “surrply,” or “affopp”; or coded “respm-cr” and “crrespop,” “crreply,” or “surrply.”

Due Dates in Civil Cases

In the ten civil cases examined, four response briefs were filed at night on the days that they were due. Another was filed Sunday night when due the previous Friday.

Five Randomly Selected Motions

Three extension motions were granted promptly. A summary judgment opposition brief was filed late at night on the day that it was due. A dismissal motion was responded to with an amended complaint.

1. *Papi v. CBE Group*, M.D. Pa. No. 3:17-cv-1807, D.E. 12 (02/05/2018 15:07): BRIEF IN SUPPORT re [10] MOTION for Summary Judgment filed by CBE Group. (Attachments: # (1) Declaration of Thomas J. Lockard, # (2) Exhibit(s) A, # (3) Exhibit(s) B, # (4) Exhibit(s) C, # (5) Exhibit(s) D, # (6) Exhibit(s) E) (Olson, Charity). The opposition brief, D.E. 14, was filed at 11:15 p.m. three weeks after the afternoon motion brief.

2. *Baker v. Pryor*, M.D. Pa. No. 1:17-cv-2308, D.E. 11 (07/25/2018 14:13): MOTION for Extension of Time to Complete Discovery by Robert Pryor. (Attachments: # (1) Certificate of Concurrence, # (2) Proposed Order) (Reeser, Christopher). The afternoon extension motion was granted on the next day, D.E. 12.

3. *Thomas v. Blocker*, M.D. Pa. No. 4:18-cv-812, D.E. 33 (10/14/2018 20:12): MOTION for Extension of Time to Amend [1] Complaint by Angel Luis Thomas, Sr. (Attachments: # (1) Proposed Order) (Sawicki, Marianne). The extension motion filed at 8:12 p.m. on a Sunday was granted on Tuesday afternoon.

4. *Giddins v. Geisinger Medical Center*, M.D. Pa. No. 4:18-cv-815, D.E. 34 (09/28/2018 14:10): MOTION to Dismiss *and for Summary Judgment* by Bureau of Prisons. (Attachments: # (1) Proposed Order) (Thiel, G.). An October 12 afternoon motion brief followed the afternoon motion by two weeks, D.E. 37. Morning pro se motions for extensions of time to respond, D.E. 36, 42, were granted, and the response brief was due on January 24, 2019, D.E. 39, 43. On January 23, the plaintiff filed an unsuccessful motion to amend the complaint, D.E. 44, 45, and on February 20, the plaintiff filed an amended complaint, D.E. 49.

5. *Raymer v. Berkley Mid-Atlantic Group, LLC*, M.D. Pa. No. 3:18-cv-946, D.E. 7 (05/16/2018 10:18): MOTION for Extension of Time to File Answer re [1] Notice of Removal, *CERTIFICATE OF CONCURRENCE* by Berkley Mid-Atlantic Group, LLC, Firemen's Insurance Company of Washington, D.C. (Rubert, William). The morning extension motion was granted on the day that it was filed, D.E. 8.

Five Randomly Selected Nighttime Responses

Three response briefs were filed at night on the days that they were due. One brief due on a Friday was filed on the following Sunday night. A nighttime discovery reply brief was filed on the same day as the opposition brief and one day after the motion.

1. *Marsulex Environmental Technologies v. Selip S.P.A.*, M.D. Pa. No. 1:15-cv-269, D.E. 101 (12/06/2018 22:51): REPLY BRIEF re [99] MOTION for Discovery filed by Selip S.P.A. (Brophy, Michael). The morning discovery motion was filed on a Wednesday, D.E. 99, and opposed on Thursday afternoon, D.E. 100. The 10:51 p.m. reply brief was filed about nine hours later.

2. *Wormuth v. Berryhill*, M.D. Pa. No. 4:17-cv-1298, D.E. 21 (04/01/2018 23:33): PLAINTIFF'S REPLY BRIEF by Christopher D. Wormuth as to [18] Brief Filed By Defendant in Social Security Appeal Case. (Gornstein, Sharon). In this social security case, the defendant's afternoon brief, D.E. 18, was filed twenty-four days after the plaintiff's 1:30 a.m. brief, D.E. 17. Pursuant to an extension order, D.E. 20, the reply brief was due on Friday, March 30, and filed at 11:33 p.m. on Sunday, April 1. The court granted the plaintiff relief a few months later, D.E. 23, 24.

3. *F.T. v. Carbon County*, M.D. Pa. No. 3:17-cv-1675, D.E. 112 (06/26/2018 23:57): BRIEF IN OPPOSITION re [93] MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM *Of Hospital Defendants* filed by F.T. (Attachments: # (1) Appendix Certificate of Compliance, # (2) Appendix Certificate of Service) (Webb, Stephanie). An afternoon motion brief, D.E. 105, was filed two weeks after a morning motion, D.E. 93. The 11:57 p.m. response brief was filed another two weeks later.

4. *Halchak v. Dorrance Township Board of Supervisors*, M.D. Pa. No. 3:18-cv-1285, D.E. 10 (07/17/2018 21:21): BRIEF IN SUPPORT re [7] MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Code Inspections, Inc., Ken Fenstermacher. (Attachments: # (1) Affidavit Certificate of Service,

(2) Exhibit(s) Exhibit A) (Dougherty, Candidus). The nighttime motion brief was filed two weeks after the afternoon motion, D.E. 7.

5. *Reyan v. Pennsylvania Department of Corrections*, M.D. Pa. No. 3:18-cv-1485, D.E. 27 (12/18/2018 21:44): BRIEF IN OPPOSITION re [21] MOTION to Dismiss of *Medical Defendants* filed by Dalmer Lee Reyan. (Attachments: # (1) Exhibit(s) Exhibit A) (Jubelirer, Laurie). The nighttime opposition brief was filed four weeks after the daytime motion, D.E. 21, and motion brief, D.E. 22, pursuant to an extension granted by the court, D.E. 26.

Due Dates in Criminal Cases

Some nighttime responses were filed on the days that they were due, and some apparently were filed early.

Five Randomly Selected Motions

Five unopposed motions, two filed in the evening, were granted one to five days later.

1. *United States v. Morales*, M.D. Pa. No. 3:15-cr-154-1, D.E. 584 (01/31/2018 16:19): MOTION to Continue *Pretrial Motions* by Joseph Morales. (Sundmaker, Thomas). The afternoon motion to continue sentencing, with which the prosecutor concurred, was granted on the following day, D.E. 585.

2. *United States v. Daniel*, M.D. Pa. No. 3:16-cr-353-1, D.E. 96 (11/15/2018 19:30): Second MOTION to Continue *Sentencing* by Sable Daniel. (Attachments: # (1) Proposed Order) (Chavar, Dina). The unopposed 7:30 p.m. motion to continue sentencing was granted on the following day, D.E. 97.

3. *United States v. Hernandez*, M.D. Pa. No. 3:17-cr-275, D.E. 17 (01/03/2018 18:20): Unopposed MOTION for Extension of Time to File *Pretrial Motions Nunc Pro Tunc* by Orlando Hernandez. (Attachments: # (1) Proposed Order) (Reish, Brandon). The unopposed 6:20 p.m. motion for an extension of time was granted on the next day, D.E. 20.

4. *United States v. Moskovitz*, M.D. Pa. No. 1:17-cr-357-6, D.E. 121 (06/11/2018 15:48): Joint MOTION to Continue *Pretrial Motions Deadline and to Continue Jury Selection and Trial* by Mody Kalle as to Mody Kalle, Nana Mensah, Sean Murphy, Shaderick Jojo Opare, Patrick Barkers-Woode, Jason Moskovitz. (Attachments: # (1) Certificate of Concurrence, # (2) Proposed Order) (Thornton, Thomas). The joint afternoon motion to continue proceedings was granted two days later, D.E. 122.

5. *United States v. Phillips*, M.D. Pa. No. 3:17-cr-359-2, D.E. 34 (01/18/2018 14:56): Unopposed MOTION for Extension of Time to File *Pretrial Motions and Briefs* by Amod Phillips. (Attachments: # (1) Proposed Order) (McGraw, Joseph) Modified on 2/13/2018 (bs). The unopposed afternoon motion for an extension of time was granted five days later, D.E. 36.

Five Randomly Selected Nighttime Responses

Two nighttime reply briefs apparently were filed before the due dates, and one was filed on the day that it was due. Another apparently due on a Monday was

filed at night on the previous Sunday. The fifth nighttime response was a refileing correcting violations of local rules.

1. *United States v. Johnson*, M.D. Pa. No. 1:08-cr-18, D.E. 157 (03/28/2018 20:28): REPLY BRIEF by Anthony Johnson re [151] MOTION for Bond *Pending Sentencing* (Ghilardi, Melinda). The bond motion was filed on the afternoon of March 1. The opposition was filed two weeks later, in the afternoon, D.E. 155. The 8:28 p.m. reply followed four days later.

2. *United States v. Delgado*, M.D. Pa. No. 1:15-cr-3-4, D.E. 559 (09/10/2018 23:12): BRIEF IN OPPOSITION by USA as to Armando Enrique Delgado re [481] MOTION for Judgment of Acquittal, [479] MOTION for New Trial *Amended Reply Brief due by 9/24/2018*. (Taylor, Meredith). The motions responded to at 11:12 p.m. were filed at 10:06 and 10:18 p.m. on March 22, nearly six months before the response, D.E. 479, 481. Responses initially were due on April 5, but the government filed on April 4 an unopposed afternoon motion for a deadline extension until May 3, D.E. 485. Because of family illness, the prosecutor requested on the afternoon of May 3 another extension of one week, D.E. 493. On the afternoon of May 10, the prosecutor requested an additional day, D.E. 496. On the afternoon of May 12, the prosecutor sought forgiveness for a late filing, citing technical difficulties, D.E. 500, 501. In September, the court ordered a substitute response that complied with local rules, including the protection of sensitive information, D.E. 553, and the prosecutor's substitute response was filed five days later.

3. *United States v. Hill*, M.D. Pa. No. 3:17-cr-276, D.E. 44 (09/02/2018 21:19): REPLY BRIEF by Shawn Hill re [35] MOTION to Sever Counts (Ghilardi, Melinda). An afternoon severance motion was filed on July 13. The court granted an extension of the response deadline from July 27 to Sunday, August 26, D.E. 42. The government filed an afternoon opposition on August 25, D.E. 43. The reply came at 9:19 p.m. on Sunday of the following weekend.

4. *United States v. Crowder*, M.D. Pa. No. 4:17-cr-291-1, D.E. 147 (12/28/2018 20:28): REPLY BRIEF by Nathan Crowder re [130] MOTION for Disclosure of Informants (Rymsza, Edward). An 8:17 p.m. motion was filed on November 30. A 6:33 p.m. opposition brief was filed two weeks later, D.E. 139. The 8:28 p.m. reply was filed two weeks after that.

5. *United States v. Romeu*, M.D. Pa. No. 3:18-cr-114, D.E. 47 (12/03/2018 21:50): REPLY BRIEF by Angel Romeu re [31] MOTION to Dismiss *the Indictment and Suppress Wire and Electronic Communications Disclosed in Violation of Title III* (Smith, Elliot). An afternoon motion was filed on October 11. The government received an extension of the response deadline to November 16, D.E. 41, and then another extension until December 26, D.E. 43. In the event, the government responded on the afternoon of November 26, D.E. 46. The 9:50 p.m. reply was filed a week later.

The District Court for the Southern District of Texas

In civil cases, oppositions fairly reliably followed motions by three weeks. In criminal cases, the time between a motion and a response varied quite a bit.

Motions were coded “motion,” “cmotion,” or “mot2255.” Responses were coded “resp” or “crresp”; coded “respm” and “resppp,” “response,” “replsupp,” “rplyresp,” “surreply,” “rejoin,” or “rel”; or coded “respm-cr” and “response,” “crresp,” “crreply,” or “crmempop.”

Due Dates in Civil Cases

The due date for a motion response is presented in the docket text as the motion due date, three weeks after each motion in our sample. Replies generally are due one week after the response is filed. The only selected reply was a rejoinder in a removed action, and it was filed four weeks after an opposition.

Five Randomly Selected Motions

Three motions were unopposed, and the other two were never responded to.

1. *Brannan v. U.S. Bank National Association*, S.D. Tex. No. 3:17-cv-215, D.E. 39 (08/27/2018 11:23): Joint MOTION for Continuance of and Extension of Deadlines by U.S. Bank National Association, Wells Fargo Bank, N.A., filed. Motion Docket Date 9/17/2018. (Attachments: # (1) Proposed Order Granting Joint Motion for Continuance and Extension of Deadlines) (Hard-Wilson, Brenda). The parties moved jointly for a 120-day continuance so that they would have more time for settlement discussions.

2. *Flores v. Honeywell Safety Products USA, Inc.*, S.D. Tex. No. 7:18-cv-27, D.E. 8 (03/28/2018 14:46): Unopposed MOTION for Christopher Renzulli to Appear Pro Hac Vice by Shooting Academy of South Texas LLC dba Point Blank Sporting Goods, filed. Motion Docket Date 4/18/2018. (Colvin, Norton). The afternoon pro hac vice motion was unopposed.

3. *Harper v. City of Missouri City, Texas*, S.D. Tex. No. 4:18-cv-1562, D.E. 15 (10/23/2018 14:32): MOTION to Dismiss by Mike Berezin, City of Missouri City, Texas, Gregory Nelson, filed. Motion Docket Date 11/13/2018. (Attachments: # (1) Exhibit Declaration of Mayor Owen, # (2) Exhibit Declaration of Chief Berezin, # (3) Exhibit Declaration of Officer Nelson, # (4) Exhibit Email dated 08-03-2018, # (5) Exhibit Email dated 09-18-2018, # (6) Exhibit Email dated 09-20-2018, # (7) Proposed Order) (Helfand, William). The October 23 afternoon motion to dismiss was for failure to serve any defendant with process. The defendants filed on the same day an afternoon motion to dismiss the complaint for failure to state a valid claim, D.E. 16. On the next day the court set a scheduling conference for January 9, D.E. 19. At 10:42 p.m. the day before a response was due, the plaintiff filed a first amended complaint, D.E. 20. On March 4, 2019, the defendants noted that the plaintiff never responded to their October 23, 2018, motion, D.E. 26. The court granted the motion on March 14, 2019, D.E. 27.

4. *DeDear v. Taco Bell of America, LLC*, S.D. Tex. No. 4:18-cv-2107, D.E. 12 (12/05/2018 14:53): Opposed MOTION for Protective Order by Taco Bell of America, LLC, filed. Motion Docket Date 12/26/2018. (Attachments: # (1) Proposed Order) (Pilat, William). One day after filing an afternoon opposed motion for a protective order, the plaintiff filed a morning agreed motion for a protective order, D.E. 13.

5. *Repeat Precision, LLC v. Diamondback Industries, Inc.*, S.D. Tex. No. 4:18-cv-4456, D.E. 6 (12/07/2018 16:17): Unopposed MOTION for Extension of Time UNOPPOSED AND AGREED MOTION FOR EXTENSION OF TIME TO ANSWER by Repeat Precision, LLC, filed. Motion Docket Date 12/28/2018. (Attachments: # (1) Proposed Order) (Durst, Timothy). The afternoon unopposed motion was granted two days later, D.E. 8.

Five Randomly Selected Nighttime Responses

Two nighttime oppositions were filed on the days due, and two were filed the night before the due dates. One selected response was a rejoinder to an opposition in a removed action, and the rejoinder was filed four weeks after the opposition.

1. *North Cypress Medical Center Operating Co., Ltd. v. Cigna Healthcare*, S.D. Tex. No. 4:09-cv-2556, D.E. 678 (02/07/2018 21:06): RESPONSE to [669] MOTION to Compel Production of Documents filed by North Cypress Medical Center Operating Co., Ltd., North Cypress Medical Center Operating Company GP, LLC. (Attachments: # (1) Exhibit A, # (2) Exhibit B, # (3) Exhibit C, # (4) Exhibit D, # (5) Exhibit E, # (6) Exhibit F, # (7) Exhibit G, # (8) Exhibit H) (Sutter, J). The 9:06 p.m. opposition to a 7:27 p.m. discovery motion was filed on the night before its due date, D.E. 669.

2. *Cook v. AT&T CORP*, S.D. Tex. No. 4:16-cv-542, D.E. 63 (02/12/2018 22:10): RESPONSE to [53] MOTION to Exclude Expert Testimony of Bryan Vento filed by Kenneth Cook. (Attachments: # (1) Exhibit Exhibit A, # (2) Exhibit Exhibit B, # (3) Exhibit Exhibit C, # (4) Exhibit Exhibit D, # (5) Exhibit Exhibit E) (Buzbee, Anthony). The 10:10 p.m. opposition to an 8:31 p.m. motion to exclude expert testimony was filed on the day due.

3. *Kleppel v. Hunter's Manufacturing Company, Inc. d/b/a Te*, S.D. Tex. No. 4:16-cv-3715, D.E. 39 (05/21/2018 20:45): RESPONSE in Opposition to [36] MOTION to Strike [35] Surreply to Motion for Summary Judgment, filed by Kathy Kleppel. (Gourrier, Joseph). A 9:03 p.m. summary judgment surreply was filed on April 20, D.E. 35, eighteen days after an afternoon reply, D.E. 30, which was eleven days after an 11:23 p.m. response, D.E. 27, which was three weeks after a morning motion, D.E. 20. An afternoon motion to strike the surreply was filed on May 1, D.E. 36, eleven days after the surreply, and the 8:45 p.m. opposition to the motion to strike the surreply was filed on the day before the due date. The motion to strike the surreply was denied on November 15, D.E. 54, and the summary judgment motion was denied on December 7, D.E. 56.

4. *Enriquez v. Marathon Petroleum Company LP*, S.D. Tex. No. 3:17-cv-223, D.E. 17 (08/22/2018 22:29): RESPONSE to [16] Opposed MOTION for Summary Judgment filed by Luis Enriquez. (Attachments: # (1) Appendix Appendix, # (2) Proposed Order Proposed Order) (Baimbridge, Alison). The 10:29 p.m. August 22 opposition was filed on the day due, three weeks after an August 1 afternoon summary judgment motion, D.E. 16.

5. *Tharpe v. Affinion Benefits Group, LLC*, S.D. Tex. No. 1:18-cv-22, D.E. 7 (04/17/2018 22:32): REJOINDER, filed by Richard Bruce Tharpe. (Tharpe, R).

The 10:32 p.m. April 17 rejoinder supported a 5:45 p.m. motion to remand a removed action filed on February 28, D.E. 5, and opposed on the afternoon of March 21, the day due, D.E. 6. A morning amended rejoinder was filed on April 18, D.E. 8, four weeks after the motion opposition. In July, the court granted the plaintiff's motion to dismiss the case.

Due Dates in Criminal Cases

Motions in criminal cases often were unopposed, and when opposed the response times varied quite a bit.

Five Randomly Selected Motions

All selected motions were unopposed and quickly granted.

1. *United States v. Rocha-Cantu*, S.D. Tex. No. 7:18-cr-165, D.E. 11 (01/18/2018 15:55): WAIVER of Preliminary and Detention Hearings by Jose Fernando Rocha-Cantu, filed. (Attachments: # (1) Proposed Order) (Pena, Judith) Modified on 1/25/2018 (cjones, 7). [7:18-mj-00101]. Five days after an afternoon waiver of a detention hearing, the court ordered the defendant detained, D.E. 12.

2. *United States v. Hagensick*, S.D. Tex. No. 4:18-cr-191, D.E. 32 (12/05/2018 15:08): Unopposed MOTION to Continue Sentencing by Donald Gordon Hagensick, filed. (Attachments: # (1) Proposed Order) (Dupont, Thomas). The defendant's afternoon unopposed motion was granted on the next day, D.E. 33.

3. *United States v. Del Cerro-Acosta*, S.D. Tex. No. 2:18-cr-243, D.E. 24 (06/26/2018 17:13): MOTION to Dismiss Case by USA as to Stephanie Marie Del Cerro-Acosta, filed. (Attachments: # (1) Proposed Order) (Miller, Jeffrey). The government's 5:13 p.m. motion to dismiss the case was granted on the next day, D.E. 25.

4. *United States v. Mendoza-Trujillo*, S.D. Tex. No. 4:18-cr-406-1, D.E. 2 (06/22/2018 10:52): MOTION to Take Deposition of Material Witnesses *and to Detain Material Witnesses* by USA as to Fernando Mendoza-Trujillo, Javier Gonzalez-Hidalgo, Jose Avery Cruz, Eduardo Avonce-Romero, Roberto Correa-Rodriguez, filed. (Attachments: # (1) Affidavit) (Davis, Douglas) [4:18-mj-01003]. The government's morning material witness motion was granted on Tuesday, four days after it was filed, D.E. 23.

5. *United States v. Palomo*, S.D. Tex. No. 1:18-cr-591, D.E. 19 (12/20/2018 16:54): Unopposed MOTION to Continue Motion Hearing, Final Pre Trial Conference and Jury Selection by Ricardo Palomo, filed. (Attachments: # (1) Proposed Order) (Flores, Rigoberto). The defendant's afternoon unopposed motion was granted on the next day, D.E. 20.

Five Randomly Selected Nighttime Responses

The time between a motion and a response ranged from four days to two years. The two longest intervals were for responses to habeas corpus motions.

1. *United States v. Pryor*, S.D. Tex. No. 4:04-cr-258, D.E. 220 (04/16/2018 21:07): RESPONSE to Motion by USA as to Russell Ray Pryor re [207]

MOTION to Vacate under 28 U.S.C. 2255 (Civil Action No. 4:16CV2985), filed. (Attachments: # (1) Exhibit A) (Leo, Leo). The 9:07 p.m. opposition was filed a bit less than two years after the habeas corpus motion, D.E. 207. The brief supporting the motion was filed nearly two months after the motion, D.E. 209.

2. *United States v. Martinez-Rodriguez*, S.D. Tex. No. 7:13-cr-235-2, D.E. 163 (11/13/2018 23:02): Memorandum in Opposition by USA as to Julian Martinez-Rodriguez re [152] MOTION to Vacate under 28 U.S.C. 2255 (Civil Action No. 7:18cv185), filed. (Smith, Jason). The 11:02 p.m. opposition was filed nearly five months after an afternoon habeas corpus motion, D.E. 152. The opposition was filed a month and a day after the original due date set by order, D.E. 153, one day after the due date extended by two later orders, D.E. 160, 162.

3. *United States v. Zamora*, S.D. Tex. No. 2:17-cr-340-3, D.E. 193 (01/22/2018 23:46): RESPONSE to Motion by USA as to Mary Beth Zamora re [186] MOTION to Withdraw Document [181] Order MOTION to Withdraw Plea of Guilty, filed. (Attachments: # (1) Proposed Order) (Watt, Lance). The response was filed four days after the motion to withdraw a guilty plea, D.E. 186, and three days before the motion hearing, *see* D.E. 187.

4. *United States v. Berry*, S.D. Tex. No. 4:17-cr-385, D.E. 108 (10/31/2018 21:24): RESPONSE in Opposition by Michael Berry as to Gwendolyn Berry re [104] MOTION for Writ of Garnishment *and Motion to Quash*, filed. (Attachments: # (1) Exhibit Ex. A, # (2) Exhibit Ex. B) (Gaither, R). The 9:24 p.m. opposition was filed two weeks after a morning motion, D.E. 104.

5. *United States v. Casas-Ramirez*, S.D. Tex. No. 4:18-cr-445, D.E. 17 (11/16/2018 22:41): RESPONSE to Motion by USA as to Adrian Casas-Ramirez re [15] MOTION to Dismiss, filed. (Attachments: # (1) Proposed Order Denying Casas-Ramirez's Motion to Dismiss Indictment) (Holder, Charmaine). The 11:41 p.m. opposition was filed twenty-five days after an afternoon motion, D.E. 15. The response originally was due ten days after the October 22 motion, but two days before the due date the government filed an unopposed 8:58 p.m. motion to extend the deadline by fifteen days, D.E. 16.

The District Court for the District of Utah

Motions were coded “motion” or “crmotion.” Responses were coded “resp” or “crresp”; coded “respm” and “reply,” “respopp,” “response,” “affopp,” or “rel”; coded “respm-cr” and “response,” “crrespop,” “crreply,” or “rel”; or coded “respoth” and “affopp.”

Due Dates in Civil Cases

Responses to motions responding to a complaint or for summary judgment are due four weeks after service of the motion, and responses to other motions are due two weeks after service of the motion. Replies are due two weeks after service of a response. All filings generally are due two business days before a hearing.

When opposed, most motions were opposed on the days that the responses were due.

Five Randomly Selected Motions

An opposition was filed in the afternoon on the day that it was due. Two other motions were stipulated and granted either on the day filed or three days later. Another motion was responded to on the next day. A motion to strike the fifth motion was filed five days after the motion.

1. *Nunes v. Rushton*, D. Utah No. 2:14-cv-627, D.E. 305 (06/25/2018 11:07): Stipulated MOTION for Entry of Judgment filed by Plaintiff Rachel Ann Nunes. (Attachments: # (1) Text of Proposed Order) (Bailey, Shawn). Because the morning stipulated motion was in conflict with another stipulated motion, on the day that the motion was filed the judge ordered clarification within a week, DE. 306 (docket text). An afternoon response was filed on the day that it was due, D.E. 308.

2. *City of Orem v. Essex Insurance Company*, D. Utah No. 2:16-cv-425, D.E. 146 (03/14/2018 16:35): Redacted MOTION for Sanctions and Memorandum in Support filed by Plaintiffs City of Orem, James Lauret. (Attachments: # (1) Appendix Index to Plaintiffs' Exhibits [redacted], # (2) Exhibit Exhibit 1.Plaintiffs Discovery Requests, April 4, 2017, # (3) Exhibit Exhibit 2.Defendants Response to Plaintiffs Discovery Requests, # (4) Exhibit Exhibit 3.Deposition excerpt of Carlynn Goodman, # (5) Exhibit Exhibit 4.Deposition excerpt of David Ashley, June 19, 2017, # (6) Exhibit Exhibit 5.Defendants Opposing Memorandum re Plaintiffs Motion to Compel, June 23, 2017, # (7) Exhibit Exhibit 6.Emails between counsel, July 18, 2017, August 3, 2017, # (8) Exhibit Exhibit 7.Defendants Disclosure of Expert John Murphy and his Report, # (9) Exhibit Exhibit 8.Affidavit of David Warren Ashley, November 21, 2017, # (10) Exhibit Exhibit 9 [REDACTED], # (11) Exhibit Exhibit 10 [REDACTED], # (12) Exhibit Exhibit 11 [REDACTED], # (13) Exhibit Exhibit 12 [REDACTED], # (14) Exhibit Exhibit 13 [REDACTED], # (15) Exhibit Exhibit 14. Evanstons Responses to Discoveries in Georgia case) Motions referred to Evelyn J. Furse. (Humpherys, L.). An afternoon motion to strike the motion, D.E. 153, was filed five days after the afternoon motion was filed and granted that day, D.E. 154 (docket text).

3. *N. v. Coventry Healthcare of Nebraska*, D. Utah No. 2:17-cv-1128, D.E. 10 (10/02/2018 12:02): Stipulated MOTION for Extension of Time deadline for dispositive motions filed by Plaintiffs Brian N., Nicholas N., Nicole N. (Attachments: # (1) Text of Proposed Order) (King, Brian). The afternoon stipulated motion was granted on the day that it was filed.

4. *Huffaker v. Experian Information Solutions*, D. Utah No. 1:18-cv-43, D.E. 13 (10/23/2018 16:40): Stipulated MOTION to Dismiss Party Prime Acceptance Corp. and Memorandum in Support filed by Plaintiff Marny Huffaker. (Attachments: # (1) Text of Proposed Order Proposed Order) (McBride, Ryan). The afternoon stipulated motion was granted three days after it was filed, D.E. 14.

5. *Taylor v. Jenkins*, D. Utah No. 2:18-cv-804, D.E. 3 (10/19/2018 14:03): MOTION to Dismiss and Memorandum in Support filed by Appellee Lon Jenkins. Attorney Lon A. Jenkins added to party Lon Jenkins (pty:e) (Jenkins, Lon). A morning opposition brief, D.E. 5, was filed on the day after the afternoon motion was filed.

Five Randomly Selected Nighttime Responses

Two nighttime summary judgment oppositions were filed four weeks after evening motions. A nighttime summary judgment opposition and a nighttime summary judgment reply were each filed on the day set by an order extending the time to respond. Another summary judgment opposition was filed less than three weeks after the motion.

1. *Skywalker Holdings v. YJ IP*, D. Utah No. 1:16-cv-64, D.E. 92 (03/21/2018 20:10): MEMORANDUM in Opposition re [88] MOTION for Partial Summary Judgment and Memorandum in Support filed by Defendant YJIP Inc. (Attachments: # (1) Exhibit ReExam Request, # (2) Exhibit ReExam Decision, # (3) Exhibit Alternate Designs) (Mason, Robert). The 8:10 p.m. filing was in response to a summary judgment motion filed at 6:21 p.m. four weeks previously, D.E. 88.

2. *Derive Power v. EZ Lynk SEZC*, D. Utah No. 2:16-cv-1066, D.E. 444 (06/01/2018 23:59): Redacted MEMORANDUM in Opposition re [288] Redacted MOTION for Summary Judgment and Memorandum in Support re: *Plaintiffs' Trade Secret Claims* filed by Plaintiffs Derive Power, Derive Systems. (Hatch, Brent). The 9:59 p.m. summary judgment opposition was filed four weeks after the 7:00 p.m. motion was filed, D.E. 288.

3. *Norman v. Thompson*, D. Utah No. 2:17-cv-300, D.E. 45 (05/18/2018 20:49): Defendant's REPLY to Response to Motion re [34] Defendant's MOTION for Summary Judgment and Memorandum in Support filed by Defendants Board of Utah County Commissioners, Greg Graves, William C. Lee, Bryan E. Thompson, Utah County. (Attachments: # (1) Exhibit A – Declaration of Paul Jones) (Wilson, Analise). The May 18 8:49 p.m. reply was filed on the day due pursuant to an order issued on May 4, D.E. 43.

4. *M. v. Premera Blue Cross*, D. Utah No. 2:17-cv-1152, D.E. 40 (04/30/2018 23:42): MEMORANDUM in Opposition re [28] MOTION for Summary Judgment and Memorandum in Support filed by Plaintiffs David M., Lyn M. (King, Brian). The 9:42 p.m. filing opposed a morning summary judgment motion filed less than three weeks previously, D.E. 28.

5. *Castle v. Thor Motor Coach*, D. Utah No. 4:18-cv-46, D.E. 19 (08/13/2018 23:33): Plaintiff's MEMORANDUM in Opposition re [7] MOTION to Dismiss filed by Plaintiffs Christopher Castle, Jayme Castle. (Thomas, Benjamin). The 11:33 p.m. opposition was filed on the day that it was due—opposing a morning motion filed six weeks previously, D.E. 7—pursuant to an order issued on July 27 extending the due date, D.E. 14.

Due Dates in Criminal Cases

We observed one response filed at night on the day that it was due. The selected motions were unopposed and granted quickly. The other selected responses were filed either over a short time frame or over a long time frame.

Five Randomly Selected Motions

All five randomly selected motions were unopposed and granted quickly.

1. *United States v. Hymas*, D. Utah No. 2:16-cr-461-2, D.E. 7 (05/25/2018 16:35): MOTION for Installment Payment by USA as to Season Hymas. (Attachments: # (1) Text of Proposed Order Stipulation for Payment) Attorney Allison J.P. Moon added to party USA (pty:pla) (Moon, Allison). The Friday afternoon stipulated motion was granted on Tuesday after the Memorial Day weekend, D.E. 8.

2. *United States v. Heyer*, D. Utah No. 2:17-cr-418-5, D.E. 50 (04/09/2018 13:18): First MOTION to Continue *JURY TRIAL* filed by Vicki Lynn Heyer. (Attachments: # (1) Text of Proposed Order) (Koch, A.). The afternoon motion to continue the trial was unopposed and granted on the day that it was filed, D.E. 53.

3. *United States v. Hedin*, D. Utah No. 1:18-cr-73, D.E. 16 (09/27/2018 11:43): Stipulated MOTION to Continue *Jury Trial* filed by Kerry Charles Hedin. (Attachments: # (1) Text of Proposed Order) (Isaacson, Tara). The morning stipulated motion to continue the jury trial was granted on the next day, D.E. 17.

4. *United States v. Mendez-Mata*, D. Utah No. 2:18-cr-141-5, D.E. 61 (06/11/2018 16:06): First MOTION for Protective Order by USA as to Josshua Perez Rivas, Joao Silva Robertson, Starlin Garcia Caraballo, Pedro Rivera Velazquez, Luis Mendez Mata, Carlos Eduardo Gonzales Duran, Jean Carlos Dumont Gonzales. (Attachments: # (1) Text of Proposed Order) (LeSueur, Carl). The afternoon unopposed motion for a protective order was granted on the day that it was filed, D.E. 62.

5. *United States v. Chanhmany*, D. Utah No. 2:18-cr-312, D.E. 14 (08/27/2018 14:27): MOTION to Continue *Jury Trial* filed by Randy Chanhmany. (Attachments: # (1) Text of Proposed Order) (Hamilton, Benjamin). The afternoon unopposed Monday motion to continue the jury trial was granted on Friday, D.E. 15.

Five Randomly Selected Nighttime Responses

One selected response was filed at night on the day that it was due. Three of the randomly selected nighttime responses were filed in the same case. They were all responses to motions in limine filed on the previous day and to be heard on the next day. The other response was filed one day short of three weeks after the motion and two days before the scheduled hearing.

1. *United States v. Keller*, D. Utah No. 1:15-cr-1-1, D.E. 62 (09/18/2018 22:21): RESPONSE to Motion by USA as to Michael Kevin Keller, Thomas C. MacElwee re [59] Defendant's MOTION for Early Termination of Supervised

Release for Michael Kevin Keller (1) Count 1 (Dishman, Lake). The 10:21 p.m. opposition was filed on the night before three weeks after an afternoon motion was filed, D.E. 59, and two days before the scheduled hearing, D.E. 61 (docket text). Instead, the judge granted early termination of supervised relief one day before the scheduled hearing, D.E. 64.

2. *United States v. Membrano-Navarro*, D. Utah No. 2:17-cr-747, D.E. 28 (03/21/2018 22:46): RESPONSE to Motion by USA as to Jose Membrano-Navarro re [24] MOTION in Limine *to Exclude Evidence Pursuant to Rule 404(b), F.R.E.* (McDonald, Rachel). The 10:46 p.m. March 21 response opposed an 11:05 a.m. March 20 motion, D.E. 24, with a hearing scheduled for 1:30 p.m. on March 22, DE. 27 (docket text).

3. *United States v. Membrano-Navarro*, D. Utah No. 2:17-cr-747, D.E. 29 (03/21/2018 22:47): RESPONSE to Motion by USA as to Jose Membrano-Navarro re [22] MOTION in Limine *to Exclude Evidence at Trial* (McDonald, Rachel). The 10:47 p.m. March 21 response opposed an 11:03 a.m. March 20 motion, D.E. 22, with a hearing scheduled for 1:30 p.m. on March 22, D.E. 27 (docket text).

4. *United States v. Membrano-Navarro*, D. Utah No. 2:17-cr-747, D.E. 30 (03/21/2018 22:49): RESPONSE to Motion by USA as to Jose Membrano-Navarro re [23] MOTION in Limine *to Exclude Expert Witnesses and Reports* (McDonald, Rachel). The 10:49 p.m. March 21 response opposed an 11:04 a.m. March 20 motion t, D.E. 23, with a hearing scheduled for 1:30 p.m. on March 22, DE. 27 (docket text).

5. *United States v. Meadows*, D. Utah No. 2:17-cr-749, D.E. 27 (06/27/2018 22:01): MEMORANDUM in Support by Kimberly Sue Meadows re [19] Defendant's MOTION to Suppress (Bridge, Adam). A morning motion to suppress controlled substances was filed on January 31, DE. 19, delaying the jury trial (docket text). An evidentiary hearing was scheduled for March 1, D.E. 20 (docket text). Oral argument was first set for June 7, D.E. 21 (docket text), and then set for August 9, D.E. 26 (docket text). The selected response was a 10:01 p.m. June 27 supporting brief (coded "crrespm" and "rel" and coded "respm-cr" and "crrespsu") filed on the day that it was due pursuant to the court's order, D.E. 21 (docket text). The morning opposition brief was filed on July 26, D.E. 33, the day before it was due pursuant to an amended court order, D.E. 32 (docket text). Oral argument was reset for August 16, D.E. 35 (docket text).

The District Court for the District of the Virgin Islands

Nighttime responses were more typically filed on the days due rather than on nights before the days due.

Motions were coded "motion" or "crmotion." Responses were coded "respm" or "crrespm"; coded "resp" and "Opposi," "Resp," "reply," "repli," "memopp," or "affopp"; or coded "respm-cr" and "opposite," "crreply," "crreopp," or "crmemop."

Due Dates in Civil Cases

Oppositions were due two weeks after service of a motion, and replies were due two weeks after that. Responses filed at night tended to be filed on the days that they were due.

Five Randomly Selected Motions

The only motion opposed was opposed one day after the motion was filed. That motion was supported by another party at night on the day that the motion was filed.

1. *United States of America v. \$485.00 In U.S. Currency*, D.V.I. No. 3:16-cv-40, D.E. 12 (03/12/2018 16:49): MOTION to Continue *Hearing* by Plaintiff United States of America. (Attachments: # (1) Exhibit A, # (2) Text of Proposed Order) (Cannon, Sansara). This was an in rem action for an attempt to illegally import winning Puerto Rico lottery tickets “into the United States.” The afternoon motion to continue the next day’s hearing one month apparently was unsuccessful, as the hearing apparently proceeded as scheduled, D.E. 13 (sealed minutes).

2. *DLJ Mortgage Capital, Inc. v. Sheridan*, D.V.I. No. 3:16-cv-85, D.E. 137 (06/15/2018 13:06): MOTION to Quash *Improper Trial Testimony Subpoena* by Movant FirstBank Puerto Rico. (Attachments: # (1) Text of Proposed Order) (Rich, Carol Ann). The June 15 afternoon motion to quash was filed by a nonparty, *see* supporting brief, D.E. 138. The plaintiff joined the motion at 10:14 p.m. on the day that it was filed, D.E. 144. The lead defendant opposed the motion on the following afternoon, D.E. 147. The motion was denied as moot on June 18, D.E. 156 (docket text).

3. *The Bank of Nova Scotia v. Ambrose*, D.V.I. No. 1:17-cv-8, D.E. 71 (10/24/2018 16:56): Third MOTION for Entry of Default *as to Henry Moren Ambrose, Jr. a/k/a Henry Moren Ambrose* by Plaintiff The Bank of Nova Scotia. Motions referred to Magistrate Judge George W. Cannon. (Attachments: # (1) Text of Proposed Order proposed Entry of Default) (Harrington, Johanna). The afternoon default motion was granted five days after it was filed, D.E. 73.

4. *Prosper v. Bureau of Corrections*, D.V.I. No. 1:17-cv-20, D.E. 26 (06/19/2018 11:07): MOTION to Continue *Status Conference Scheduled for August 3, 2018* by Plaintiff Diane Prosper. Motions referred to Magistrate Judge George W. Cannon. (Attachments: # (1) Exhibit, # (2) Text of Proposed Order) (Webster, Martial). The morning motion sought to schedule a status conference for some time after 1:00 p.m. instead of at 10:00 a.m. on the day scheduled, also proposing a few alternative dates. Forty-nine minutes after the motion was filed, the court scheduled the status conference for 2:00 p.m., D.E. 27 (docket text).

5. *Prosper v. Bureau of Corrections*, D.V.I. No. 1:17-cv-20, D.E. 48 (09/19/2018 09:39): MOTION to Continue *Time of Status Conference Scheduled for October 3, 2018* by Plaintiff Diane Prosper. Motions referred to Magistrate Judge George W. Cannon. (Attachments: # (1) Text of Proposed Order)

(Webster, Martial). The morning motion sought to schedule a status conference for some time after noon on the day scheduled. The motion was granted forty-eight minutes after it was filed, D.E. 49 (docket text).

Five Randomly Selected Nighttime Responses

Each of the five randomly selected nighttime responses appears to have been filed at night on the day that it was due, at times ranging from 9:44 to 11:16 p.m.

1. *Rivera v. Sharp*, D.V.I. No. 1:08-cv-20, D.E. 144 (10/31/2018 21:51): Response re [141] Response *and Objections to Plaintiff's Statement of Counter-Facts* filed by Defendants Atlantic Tele-Network, Inc., Choice Communications, LLC, Joseph Sharp. (Christian, Adam). A morning summary judgment motion to enforce a settlement agreement was filed by defendants on September 27, D.E. 132, and supported by a statement of undisputed facts filed five minutes later, D.E. 134. The plaintiff's afternoon response statement of facts was filed twenty days after that, on October 17, D.E. 141. The 9:51 p.m. statement of counter-facts was filed two weeks later.

2. *Rodriguez v. Spartan Concrete Products, LLC*, D.V.I. No. 1:12-cv-29, D.E. 137 (05/11/2018 21:44): Response re [136] Order on Motion for Extension of Time to File, [133] Order on Motion in Limine, *to Court's Order* filed by Plaintiffs Julio Beccerril, Everisto Rodriguez. (Russell, Ronald). The 9:44 p.m. response to a court order was filed on the day that it was due (coded "resp" and "rel" and coded "respm" and "resp").

3. *Prosser v. Springel*, D.V.I. No. 3:13-cv-87, D.E. 120 (10/29/2018 23:10): Opposition to Motion re [118] MOTION for Writ of Mandamus filed by Appellee James P. Carroll. (Attachments: # (1) Exhibit A, # (2) Exhibit B) (Viele, Elizabeth). The 11:10 p.m. opposition was filed two weeks after a 5:11 p.m. motion, D.E. 118.

4. *Leann Joseph v. Virgin Islands Telephone Company*, D.V.I. No. 3:16-cv-64, D.E. 89 (04/16/2018 23:16): Response re [88] MOTION for Extension of Time to Complete Discovery filed by Defendant Virgin Islands Telephone Company, dba, Innovative Telephone. (Attachments: # (1) Affidavit, # (2) Exhibit, # (3) Exhibit, # (4) Exhibit) (Christian, Adam). The 11:16 p.m. opposition was filed two weeks after an afternoon motion, D.E. 88.

5. *Ling-Campise v. Magic Moments LLC*, D.V.I. No. 3:16-cv-72, D.E. 121 (02/28/2018 22:13): MEMORANDUM in Support of Opposition re [109] MOTION for Partial Summary Judgment filed by Plaintiff Annie Ling-Campise. (Feuerstein, Alan). A morning motion for partial summary judgment was filed on January 24, D.E. 109. The due date for a response was set on February 12 as March 15, "a thirty day extension," D.E. 115. The court was willing to extend the deadline to February 28, D.E. 116, and the 10:13 p.m. response was filed on that day.

Due Dates in Criminal Cases

Filing at night on the day a response is due was not as apparent in criminal cases as it was in civil cases.

Five Randomly Selected Motions

No motion was opposed.

1. *United States v. Girard*, D.V.I. No. 1:14-cr-40, D.E. 150 (11/06/2018 12:35): MOTION to Dismiss *REVOCATION PROCEEDINGS* by USA as to Paul Girard. (Andrews, Alphonso). In an afternoon motion, “the Government decline[d] to further prosecute the instant revocation matter.” The court granted the motion the same day, D.E. 151.

2. *United States v. Baxter*, D.V.I. No. 3:17-cr-24-1, D.E. 86 (04/20/2018 13:46): MOTION for Joinder by Steven Baxter. (Attachments: # (1) Exhibit Signed Wairver) (Sanchez-Mercado, Edgar). The defendant joined the government’s previous-day 5:05 p.m. motion for a continuance, D.E. 85. The trial date was pushed back one month, D.E. 94 (docket text).

3. *United States v. Santana*, D.V.I. No. 1:17-cr-28, D.E. 18 (08/29/2018 12:36): MOTION to Continue by Luis Antonio Rios Santana. Motions referred to Magistrate Judge George W. Cannon. (Villegas, Gabriel). According to the defendant’s afternoon motion, “The government has not responded to undersigned counsel’s request to determine if this motion is opposed.” The motion was granted one week later, D.E. 19 (docket text).

4. *United States v. Martinez*, D.V.I. No. 3:18-cr-3, D.E. 25 (03/21/2018 20:12): MOTION to Continue *Trial* by Braulio Martinez. (Manning, Yohana). The 8:12 p.m. unopposed motion was granted three days later, D.E. 28 (docket text).

5. *United States v. Brodie*, D.V.I. No. 3:18-cr-10, D.E. 27 (08/07/2018 14:49): Ex Parte MOTION (Responses due by 8/20/2018) by Shaquin Brodie as to Shaquin Brodie. (Attachments: # (1) Text of Proposed Order) (Hurson, Brendan). The court granted permission to file the afternoon motion documents ex parte, D.E. 28 (docket text). A sealed ex parte order was issued on the next day, D.E. 30. This may be a Criminal Justice Act matter.

Five Randomly Selected Nighttime Responses

The randomly selected responses included a reply filed ten days after a motion opposition; an opposition (selected twice, once for each of two defendants), filed two days before trial, to motions filed one and two days before that; an opposition filed thirteen evenings before a hearing, which was scheduled for about three months after the motion was filed; and a notice of no opposition to a motion to continue a hearing filed four days after the motion and seventeen days before the original hearing date.

1. *United States v. Edinborough*, D.V.I. No. 3:04-cr-154-6, D.E. 1141 (12/03/2018 21:29): OPPOSITION by USA as to EDINBOROUGH, JR. CLYDE re [1136] MOTION for Early Termination of Probation (Smith, Delia). The 9:29 p.m. December 3 opposition was filed in response to a September 28 afternoon motion for supervised release, D.E. 1136; a hearing was scheduled on November 20 for December 20, D.E. 1137. The motion was denied on December 21, D.E. 1149.

2. *United States v. Edinborough*, D.V.I. No. 3:04-cr-154-6, D.E. 1142 (12/03/2018 21:45): REPLY Motion by USA as to EDINBOROUGH, JR.

CLYDE re [1139] MOTION to Continue *Motions Hearing [Unopposed]* (Smith, Delia). This is a second response selected at random from this case. It is the government's 9:45 p.m. December 3 notice of no opposition to a defendant's 5:18 p.m. motion filed on November 29 to continue a December 20 hearing on a motion of early termination of supervised release to accommodate counsel's eighteen-day medical leave, or to have the hearing by telephone conference, D.E. 1139. The hearing occurred on December 20, D.E. 1148 (minutes), and the motion for termination of supervised release was denied on December 21, D.E. 1149.

3. *United States v. Burgos-Montanez*, D.V.I. No. 1:16-cr-9-3, D.E. 1424 (04/28/2018 21:06): REPLY to Motion by USA as to Sergio Quinones-Davila, Omy A Gutierrez-Calderon, Jose R Hodge, Anibal A. Vega-Arizmendi, Jesus Burgos-Montanez, Jean Carlos Vega-Arizmendi re [1414] Notice (Other) *GOVT'S RESPONSE TO BURGOS's and JEAN VEGA's BOURJAILY MEMO* (Andrews, Alphonso). The government responded at 9:06 p.m. on Saturday, April 28, to morning briefs filed by two defendants concerning admissibility of out-of-court coconspirator statements filed on April 26, D.E. 1414, and April 27, D.E. 1415. The trial began on Monday, April 30, D.E. 1428 (sealed minutes).

4. *United States v. Burgos-Montanez*, D.V.I. No. 1:16-cr-9-10, D.E. 1424 (04/28/2018 21:06): REPLY to Motion by USA as to Sergio Quinones-Davila, Omy A Gutierrez-Calderon, Jose R Hodge, Anibal A. Vega-Arizmendi, Jesus Burgos-Montanez, Jean Carlos Vega-Arizmendi re [1414] Notice (Other) *GOVT'S RESPONSE TO BURGOS's and JEAN VEGA's BOURJAILY MEMO* (Andrews, Alphonso). This docket entry was selected at random twice, once for each of two defendants. The government responded at 9:06 p.m. on Saturday, April 28, to morning briefs filed by two defendants concerning admissibility of out-of-court coconspirator statements filed on April 26, D.E. 1414, and April 27, D.E. 1415. The trial began on Monday, April 30, D.E. 1428 (sealed minutes).

5. *United States v. Terminix International USVI, LLC*, D.V.I. No. 3:17-cr-7-2, D.E. 53 (03/01/2018 20:44): REPLY to Motion by VVS, LLC, Catalus Capital USVI, LLC as to THE TERMINIX INTERNATIONAL COMPANY LIMITED PARTNERSHIP, TERMINIX INTERNATIONAL USVI, LLC re [51] Reply to *Defendants' Response to Notice of Request to Be Heard Pursuant to 18 U.S.C. Section 3771(a)(4)* (Attachments: # (1) Exhibit A, # (2) Exhibit B, # (3) Exhibit C) (Plaskett, Miles). This is a reply by victims seeking restitution. A morning request to be heard by the government concerned the victims' planned seeking of restitution, and it was filed on February 5, D.E. 49. The victims responded on the afternoon of February 9, D.E. 50, and the defendants responded on the afternoon of February 19, two weeks after the government's request to be heard, D.E. 51 (docketed as a reply). The victims' 8:44 p.m. reply followed ten days later.

The District Court for the Eastern District of Arkansas

A filing generally must be made by 5:00 p.m. on the day due. Opposition to a motion is due two weeks after service of a motion.

Motions were coded “motion” or “crmotion.” Responses were coded “resp,” “respm,” “respm-cr,” or “crrespm.” Because nighttime responses in criminal cases were relatively rare, we examined all of them.

Most filings with response codes were responses, but some were actually filings supporting motions. Because nighttime responses on due dates are proscribed, several of the nighttime responses examined were actually filings supporting motions.

Due Dates in Civil Cases

The nighttime responses we observed were filed more than two weeks after the motions.

Five Randomly Selected Motions

Four motions were not opposed. The fifth was opposed twenty-four days after it was filed.

1. *Walker v. Payne*, E.D. Ark. No. 5:16-cv-164, D.E. 68 (02/23/2018 17:14): MOTION to Extend Time by S Cockrell, J Henderson (Hudson, Renae). The 5:14 p.m. motion was not opposed, and it was granted twelve days later, D.E. 74.

2. *Thomas v. Borg-Warner Morse Tec LLC*, E.D. Ark. No. 4:17-cv-522, D.E. 215 (09/10/2018 16:04): MOTION to Exclude *Daubert Motion to Preclude* by Honeywell International Inc (as successor-in-interest to Bendix Corporation) (Attachments: # (1) Exhibit B, # (2) Exhibit D, # (3) Exhibit E, # (4) Exhibit M, # (5) Exhibit N, # (6) Exhibit O, # (7) Exhibit P, # (8) Exhibit Q, # (9) Exhibit R, # (10) Exhibit S, # (11) Exhibit T, # (12) Exhibit U, # (13) Exhibit V, # (14) Exhibit W, # (15) Exhibit X, # (16) Exhibit Y, # (17) Exhibit Z, # (18) Exhibit AA, # (19) Exhibit BB, # (20) Exhibit CC, # (21) Exhibit DD, # (22) Exhibit EE) (Gaines, Gail). An afternoon opposition brief was filed twenty-four days after the afternoon motion, D.E. 247, and a morning reply brief was filed nine days after that, D.E. 268.

3. *Washington v. All Storage Products Inc.*, E.D. Ark. No. 4:17-cv-658, D.E. 7 (04/03/2018 10:52): Joint MOTION to Approve/Approval *Settlement Agreement, To Submit the Settlement Agreement for In Camera Review, and Dismiss Claims with Prejudice* by All Storage Products Inc., Brian J Beck, Ronald W Collar (Dobson, Allen). The joint morning motion was granted two days later, D.E. 8.

4. *Darrough v. Gober*, E.D. Ark. No. 4:18-cv-113, D.E. 40 (12/21/2018 08:14): MOTION for Extension of Time to File *Motion for Summary Judgment* by Mark Gober, Susan Potts (Ohm, Ralph). The morning motion was granted on the day that it was filed, D.E. 42.

5. *Young v. Fred's Stores of Tennessee Inc.*, E.D. Ark. No. 4:18-cv-405, D.E. 6 (09/27/2018 11:25): MOTION to Dismiss by Regina Young (Grayson,

Keith). The plaintiff's morning motion to dismiss the case was granted without intervening docket activity six weeks and six days later, D.E. 7.

Five Randomly Selected Nighttime Responses

Three nighttime filings coded responses were actually supporting briefs filed at the same times as the motions. The other two nighttime responses were filed one to four days beyond two weeks following the motions.

1. *Nieves v. Cooper Marine & Timberlands Corporation*, E.D. Ark. No. 3:15-cv-350, D.E. 411 (01/31/2018 20:02): RESPONSE to Motion re [378] MOTION to Exclude *Portions of the Reports and Testimony of Plaintiffs' Expert James F. Pritchard Pursuant to Federal Rules of Evidence 702 and Daubert*, [355] MOTION to Exclude *Testimony of James Pritchard* filed by Cooper Marine & Timberlands Corporation (As Owner Pro Hac Vice and Operator of the Barge CMT 123, Official No. 1067600), Cooper Marine & Timberlands Corporation. (Radcliff, Donald). The 8:02 p.m. opposition to two evidentiary motions was filed sixteen days after an afternoon motion, D.E. 355, and fifteen days after a morning motion, D.E. 378.

2. *Planned Parenthood of Arkansas and Eastern Oklahoma v. Jegley*, E.D. Ark. No. 4:15-cv-784, D.E. 147 (07/05/2018 21:13): BRIEF IN SUPPORT re [146] Motion to Stay *Brief in Support of Defendants' Motion to Stay Preliminary Injunction Pending Appeal* filed by Matt Durrett, Larry Jegley. (Jacobs, Dylan). Although coded "resp," this 9:13 p.m. brief supported a nighttime motion and was filed two minutes after the motion.

3. *Newburn v. Entergy Arkansas Inc.*, E.D. Ark. No. 4:17-cv-386, D.E. 20 (03/28/2018 20:44): BRIEF IN SUPPORT re [17] Order on Motion for Extension of Time to Complete Discovery, [19] Motion for Reconsideration, filed by Entergy Arkansas Inc. (Brooks, Justice). Although coded "resp," this 8:44 p.m. brief supported a nighttime motion and was filed three minutes after the motion.

4. *Catar Clinic of Hot Springs LLC v. Robinson*, E.D. Ark. No. 4:17-cv-520, D.E. 260 (12/02/2018 20:18): RESPONSE in Opposition re [247] MOTION for Sanctions *and To Dismiss*, [249] MOTION for Extension of Time to Complete Discovery (*Renewed Motion*) filed by Tiffany Terry. (Sutter, Luther). The 8:44 p.m. Sunday opposition was filed eighteen days after two morning motions, D.E. 247, 249.

5. *Committee to Restore Arkansans' Rights v. Rutledge*, E.D. Ark. No. 4:18-cv-333, D.E. 15 (05/21/2018 22:22): BRIEF IN SUPPORT re [14] Motion for Preliminary Injunction, Motion for TRO filed by Committee to Restore Arkansans' Rights, Driving Arkansas Forward. (Gray, Alex). Although coded "resp," this 10:22 p.m. brief supported a nighttime motion and was filed one minute after the motion.

Due Dates in Criminal Cases

We found only five nighttime opposition briefs filed in criminal cases in this district in 2018.

Five Randomly Selected Motions

None of the randomly selected motions received a filed opposition, and four apparently received no opposition at all.

1. *United States v. Foster*, E.D. Ark. No. 4:17-cr-113-6, D.E. 251 (05/23/2018 10:24): Second MOTION to Revoke or Modify Conditions of Pre-trial Release by USA as to Courtney Ray Foster (Moore, Benecia). A response to the motion was filed about two hours after the morning motion, D.E. 252.

2. *United States v. Hensley*, E.D. Ark. No. 4:17-cr-310, D.E. 49 (10/01/2018 13:36): MOTION in Limine To Preclude Introduction Of Evidence by USA as to Robert Nathan Hensley (Bryant, Kristin). The afternoon motion in limine was denied fifty-eight days after it was filed, D.E. 71.

3. *United States v. Jones*, E.D. Ark. No. 4:18-cr-56, D.E. 4 (10/31/2018 14:40): MOTION to Substitute Attorney by USA as to Freda Jones (Gardner, Anne). The afternoon substitution motion was granted on the following day, D.E. 5.

4. *United States v. Jordan*, E.D. Ark. No. 4:18-cr-163, D.E. 18 (06/11/2018 17:18): MOTION for Release from Custody by Alexander Joseph Jordan (Lybrand, Nicole). Three days after the 5:18 p.m. motion for release from custody, the court ordered the defendant released with conditions, D.E. 20.

5. *United States v. Henson*, E.D. Ark. No. 4:18-cr-365-2, D.E. 19 (08/03/2018 13:27): First MOTION to Continue Jury Trial by Gary Bernard Henson, Jr (Lane, Jonathan). The afternoon unopposed motion was granted six days later, D.E. 20.

All Nighttime Responses

Because nighttime responses in criminal cases were relatively rare, we examined all of them. Five opposition briefs were filed at night in criminal cases in 2018. An additional two nighttime criminal-case briefs coded as responses were actually briefs supporting the motions. Two opposition briefs were filed one week after the motions, two were filed sooner, and one was filed later than one week after the motion.

1. *United States v. Sealed 5*, E.D. Ark. No. 4:16-cr-3-5, D.E. 332 (11/19/2018 22:20): BRIEF in Support by Eric Deshon Williams re [331] MOTION to Suppress Evidence Seized from Defendant's Residence on September 3, 2015 (Spades, Michael). Although coded "crrespm," this 10:20 p.m. brief supported a nighttime motion and was filed two minutes after the motion.

2. *United States v. Neal*, E.D. Ark. No. 4:16-cr-250, D.E. 22 (06/03/2018 20:58): BRIEF in Support by Torrioan L Neal re [21] MOTION for Separate Trial on Counts Torrioan L Neal (1) Count 1,2,3 (Proctor, Willard). Although coded "crrespm," this 8:58 p.m. brief supported a nighttime motion and was filed one minute after the motion.

3. *United States v. Neal*, E.D. Ark. No. 4:16-cr-250-1, D.E. 34 (06/07/2018 22:05): RESPONSE in Opposition by Torrioan L Neal re [32] MOTION for Reconsideration re [28] Order on Motion for Separate Trial on Counts (Proctor, Willard). The 10:05 p.m. opposition brief was filed on the same day as a morning motion, D.E. 32.

4. *United States v. Burks*, E.D. Ark. No. 4:17-cr-26, D.E. 22 (05/16/2018 23:37): RESPONSE in Opposition by USA as to Edward Burks, Jr re [18] MOTION to Suppress (Walker, Edward). The 11:27 p.m. opposition brief was filed thirty-seven days after a morning suppression motion, D.E. 18. Between the motion and the opposition, the court delayed the pending trial for about six months, D.E. 20. The court granted the suppression motion one day after the opposition brief was filed, D.E. 23.

5. *United States v. Ray*, E.D. Ark. No. 4:17-cr-109, D.E. 79 (12/04/2018 22:42): RESPONSE in Opposition by USA as to Will Ray, Thomas J Farris re [66] MOTION in Limine (Trepel, Samantha). The 10:42 p.m. opposition brief, which was filed in the records of the first two of three defendants in this case, was filed one week after a 10:59 p.m. motion, D.E. 66.

6. *United States v. Colin-Flores*, E.D. Ark. No. 4:17-cr-312-1, D.E. 227 (01/18/2018 21:36): RESPONSE to Motion by David Worstell as to Randolph Luis Aviles, Javier Colin-Flores, Francisco Aguirre-Garcia, Ivan Perez-Medrano, Keyla Melissa Acevedo, Rafael Meza-Ixta, Norma Guzman, Gabriel Aguirre, Roger Tucker, David Worstell, Joshua Garrett, Monica Roy, Carla Thompson, Heather Fuentes, Kathryn Aldridge, James Arnold, Kennis Calhoun, Shelby Nichole Sanchez, Michael Scott Sellers, Harold Strouse, Jay Benton, Matthew Steven Boyd re [217] MOTION to Continue *Trial* (Nicolo, Nicki). The 9:36 p.m. opposition brief, which was filed in the records of all twenty-two defendants in this case, was filed one week after a morning motion to continue the trial date filed by one defendant, D.E. 217.

7. *United States v. Nelson*, E.D. Ark. No. 4:18-cr-213, D.E. 36 (12/02/2018 21:52): RESPONSE to Motion by Michael Lee Nelson re [33] MOTION in Limine [34] *NOTICE of Intent to Present Evidence* (Sullivan, Molly). The 9:52 p.m. opposition brief was filed two days after a morning motion, D.E. 33.

The District Court for the District of Delaware

A filing generally must be made by 6:00 p.m. on the day due. Responses are due two weeks after service of a motion, and replies are due one week after service of a response.

Nighttime responses were relatively uncommon, and there were only three in criminal cases in 2018.

Motions were coded “motion” or “crmotion.” Responses were coded “resp” or “crresp”; coded “respm” and “replybr,” “ansbr,” “response,” “reply,” “respopp,” “combbr,” “combrp,” “surbr,” or “ansbrRG”; or coded “respm-cr” and “response,” “crreply,” “crresprp,” or “crrespop.” Because nighttime responses in criminal cases were relatively rare, we examined all of them.

Most filings with response codes were responses, but some were actually filings supporting motions. Because nighttime responses on due dates are proscribed, several of the nighttime responses examined were actually filings supporting motions.

Due Dates in Civil Cases

Nighttime responses were relatively uncommon, and those observed were filed before customary due dates.

Five Randomly Selected Motions

Two pro hac vice motions and two stipulations were unopposed. A dismissal motion was opposed in the afternoon of the due date, following a stipulated extension of time.

1. *Dragon Intellectual Property LLC v. Charter Communications Inc.*, D. Del. No. 1:13-cv-2062, D.E. 208 (03/19/2018 17:41): STIPULATION TO EXTEND TIME Plaintiff's Reply Brief in Support of its Motion for Vacatur and Dismissal to March 20, 2018 – filed by Dragon Intellectual Property LLC. (Devlin, Timothy). The 5:41 p.m. stipulation was granted on the following day (docket entry).

2. *Perrigo Company v. International Vitamin Corporation*, D. Del. No. 1:17-cv-1778, D.E. 12 (04/09/2018 14:22): MOTION for Pro Hac Vice Appearance of Attorney Paul H. Beach and Brian J. Masternak – filed by Perrigo Company. (Sirkin, Sean Michael). The afternoon pro hac vice motion was granted eight days later, D.E. 14.

3. *Grizzle v. T-Mobile USA, Inc.*, D. Del. No. 1:17-cv-1831, D.E. 10 (02/15/2018 15:23): STIPULATION TO EXTEND TIME 2/15/2018 to 3/8/2018 – filed by Diversified Consultants, Inc. (Cunningham, Andrew). The afternoon stipulation was granted on the day that it was filed (docket entry).

4. *Rothschild Broadcast Distribution Systems, LLC v. Frontpoint Security Solutions, LLC*, D. Del. No. 1:18-cv-187, D.E. 15 (06/13/2018 11:00): MOTION for Pro Hac Vice Appearance of Attorney Carlos Perez-Albuerne – filed by Frontpoint Security Solutions, LLC. (Rovner, Philip). The morning pro hac vice motion was granted on the day that it was filed (docket entry).

5. *FO2GO LLC v. KeepItSafe, Inc.*, D. Del. No. 1:18-cv-807, D.E. 11 (09/04/2018 17:49): MOTION to Dismiss – filed by KeepItSafe, Inc. (Attachments: # (1) Proposed Order) (Ovanesian, Michelle) Modified on 9/5/2018 (nms). The 5:49 p.m. dismissal motion was opposed on the afternoon due, six weeks after it was filed, D.E. 15, following a court-approved stipulation to extend the due date, D.E. 14 (and docket entry).

Five Randomly Selected Nighttime Responses

Two nighttime filings coded responses were actually supporting briefs filed minutes after the motions. Two nighttime oppositions followed motions filed the same day or one week earlier, and a reply followed an opposition by four days.

1. *Amgen Inc. v. Sanofi*, D. Del. No. 1:14-cv-1317, D.E. 452 (05/04/2018 20:10): [SEALED] ANSWERING BRIEF in Opposition re [448] MOTION for Judgment on the Pleadings Regarding Amgen's Willful Infringement Claim filed by Amgen Inc., Amgen Manufacturing Limited, Amgen USA Inc. Reply Brief due date per Local Rules is 5/11/2018. (Attachments: # (1) Certificate of

Service) (Sharp, Melanie). The 8:10 p.m. opposition was filed one week after a 10:20 p.m. motion, D.E. 448.

2. *Telebrands Corp. v. 1ByOne Products Inc.*, D. Del. No. 1:17-cv-997, D.E. 28 (01/05/2018 22:50): OPENING BRIEF in Support re [27] MOTION to Strike filed by Telebrands Corp. Answering Brief/Response due date per Local Rules is 1/19/2018. (DiGiovanni, Francis) Modified on 1/9/2018 (lih). Although coded “resp” and “rel,” this 10:50 p.m. brief supported a motion filed four minutes earlier, D.E. 27. An afternoon opposition brief was filed two weeks later, D.E. 29, and a 5:40 p.m. reply brief was filed one week after that, D.E. 31.

3. *Seiden, Esq. v. Schwartz, Levitsky, and Feldman LLP*, D. Del. No. 1:17-cv-1869, D.E. 7 (02/08/2018 20:02): OPENING BRIEF in Support re [6] MOTION to Dismiss for Lack of Jurisdiction Over the Person, Forum Non Conveniens, Lack of Service and For Failure to State a Claim filed by Schwartz, Levitsky, and Feldman LLP. Answering Brief/Response due date per Local Rules is 2/22/2018. (Attachments: # (1) Exhibit A Form S-1 Registration Statement, # (2) Affidavit Gerald Goldberg, CPA, # (3) Exhibit C Seiden v Kaneko Compl, # (4) Exhibit D Seiden v Kaneko Ch Ct Opinion, # (5) Exhibit E Canadian Shareholder Compl, # (6) Exhibit F Seiden v SLF Southern Dist NY) (McGrory, Patrick) Modified on 2/9/2018 (mdb). Although coded “resp” and “rel,” this 8:02 p.m. brief supported a motion filed ten minutes earlier, D.E. 6. Twelve days later, the parties stipulated to deadlines of March 9 for an opposition brief and March 23 for a reply, D.E. 8, and the court approved the stipulation on the following day (docket text). On March 8, the parties stipulated to amended due dates of March 30 for the opposition and April 11 for the reply, D.E. 10, and the court approved the amended stipulation four days later (docket text). An afternoon opposition brief was filed on the day due, D.E. 11, as was a morning reply, D.E. 12.

4. *Genedics, LLC v. Leap Motion, Inc.*, D. Del. No. 1:18-cv-265, D.E. 9 (03/23/2018 21:35): RESPONSE to Motion re [8] MOTION for Extension of Time to File Answer re [1] Complaint, filed by Genedics, LLC. (Attachments: # (1) Exhibit A, # (2) Exhibit B, # (3) Exhibit C, # (4) Exhibit D, # (5) Declaration of David W. deBruin, Esquire in support of Genedics, LLCs Opposition to Leap Motion, Inc.’s Motion for an Extension of Time to Respond) (deBruin, David). The 9:35 p.m. opposition was filed on the same day as an afternoon motion, D.E. 8. Three days later, the motion was referred to a magistrate judge and granted (docket text).

5. *Camarillo Holdings, LLC v. Amstel River Holdings, LLC*, D. Del. No. 1:18-cv-1456, D.E. 13 (10/01/2018 20:45): REPLY to Response to Motion re [11] MOTION for Extension of Time to File Response/Reply to Plaintiffs’ Verified Complaint (Reply in Support of Defendants’ Motion for Extension of Time (21 Days) to Answer or Otherwise Respond to Plaintiffs’ Verified Complaint) filed by Ad Tech BV, Ad Tech Cooperatief U.A., Ad Tech Holdings GP BV, Amstel River Holdings, LLC, Atlantische Bedrijven, C.V., Backpage.com, LLC, CF Acquisitions LLC, CF Holdings GP LLC, Classified Solutions LTD, Classified Strategies Cooperatief U.A., Dartmoor Holdings, LLC, Carl Ferrer,

IC Holdings, LLC, Kickapoo River Investments LLC, Les Backpage Enterprises Inc., Lupine Holdings LLC, Payment Solutions, B.V., Postfaster, LLC, Posting Solutions, LLC, UGC Tech Group, C.V., Website Technologies, LLC. (Attachments: # (1) Exhibit A) (Brown, Paul). The 8:45 p.m. reply followed a 5:12 p.m. opposition by four days, D.E. 12, and the opposition followed a 5:55 p.m. motion for an extension of time by one day, D.E. 11.

Due Dates in Criminal Cases

In 2018, there were three nighttime responses in criminal cases.

Five Randomly Selected Motions

Four filed motions, one filed after 6:00 p.m., received no filed responses, and they were resolved on the next day in three cases and five days later in one case. A nighttime motion in limine was responded to after 6:00 p.m. four days later.

1. *United States v. Padilla-Ayala*, D. Del. No. 1:11-cr-25, D.E. 34 (04/16/2018 13:33): MOTION for Early Termination of Supervised Release by Damian Padilla-Ayala. (Attachments: # (1) Text of Proposed Order) (Kousoulis, Eleni). The afternoon unopposed motion for early termination of supervised relief was granted on the following day, D.E. 35.

2. *United States v. Rakowski*, D. Del. No. 1:15-cr-23-5, D.E. 731 (04/08/2018 22:32): MOTION in Limine *TO INTRODUCE CHARACTER EVIDENCE* by USA as to William B. North, Kevyn N. Rakowski, David Gibson, Robert V.A. Harra, Wilmington Trust Corporation. (Attachments: # (1) Exhibit A) (Kravetz, Robert). The government responded to the defendant's 10:32 p.m. motion in limine at 6:47 p.m. four days later, D.E. 734. The court denied the motion one day after that, D.E. 735 (docket text).

3. *United States v. Wilmington Trust Corporation*, D. Del. No. 1:15-cr-23-1, D.E. 761 (04/20/2018 18:42): MOTION for Reconsideration re [760] Order *Regarding the Use of Transcripts in Closing Argument* by Robert V.A. Harra as to William B. North, Kevyn N. Rakowski, David Gibson, Robert V.A. Harra, Wilmington Trust Corporation. (Attachments: # (1) Exhibit A-B) (Kelly, Michael). The 6:42 p.m. motion for reconsideration was denied five days later, D.E. 764 (docket text).

4. *United States v. Sealed Defendant*, D. Del. No. 1:17-cr-37, D.E. 47 (03/01/2018 11:10): MOTION to Dismiss by USA as to Eric Kappesser. (Wolf, Lesley). The government's morning dismissal motion was granted on the following day, D.E. 48.

5. *United States v. McMahon*, D. Del. No. 1:18-cr-30, D.E. 21 (09/04/2018 13:33): MOTION for Extension of Time to File *Pre-trial Motions* by Ian W McMahon. (Attachments: # (1) Text of Proposed Order) (Kousoulis, Eleni). The afternoon extension motion was granted on the following day, D.E. 22.

All Nighttime Responses

Because nighttime responses in criminal cases were relatively rare, we examined all of them. In 2018, there were three nighttime responses in criminal

cases. In addition, a nighttime supporting brief filed nearly six months after the motion was coded as a response.

1. *United States v. Harmon*, D. Del. No. 1:13-cr-74-3 and 1:13-cr-74-4, D.E. 243 (05/23/2018 20:35): RESPONSE to Motion by USA as to Dashunda Harmon, Vanessa Singletary re MOTION to Vacate under 28 U.S.C. 2255, MOTION to Vacate under 28 U.S.C. 2255 (Attachments: # (1) Appendix cover page, # (2) Exhibit A, # (3) Exhibit B, # (4) Exhibit C, # (5) Exhibit D) (Cloud, Whitney). The government's 8:35 p.m. opposition followed two pro se defendants' motion for relief from judgment—in a four-defendant case—by nearly eight months, D.E. 226. The original due date was November 9, 2017 (docket text), and the government initially responded on October 26, D.E. 229, and then again on December 14, D.E. 233.

2. *United States v. Wilmington Trust Corporation*, D. Del. No. 1:15-cr-23, D.E. 716 (03/20/2018 20:43): RESPONSE to Motion by David Gibson as to William B. North, Kevyn N. Rakowski, David Gibson, Robert V.A. Harra, Wilmington Trust Corporation re [714] MOTION Jury Instruction on Falsity Regarding Office of Thrift Supervision Guidance (Attachments: # (1) Exhibit A, # (2) Exhibit B, # (3) Exhibit C, # (4) Exhibit D, # (5) Exhibit E, # (6) Exhibit F, # (7) Exhibit G, # (8) Exhibit H, # (9) Exhibit I, # (10) Exhibit J, # (11) Exhibit K, # (12) Exhibit L, # (13) Exhibit M) (Guberman, Phara). This 8:43 p.m. opposition was filed in the case records of all five defendants in the case one day after a 10:28 p.m. jury-instruction motion, D.E. 714. The motion in one of the defendant's case was one of the randomly selected motions for this study.

3. *United States v. Cook*, D. Del. No. 1:16-cr-50, D.E. 91 (11/28/2018 21:50): RESPONSE to Motion by USA as to William Cook re [90] MOTION to Quash or Modify Subpoena to Testify at a Hearing or Trial in a Criminal Case (Cloud, Whitney). The 9:50 p.m. opposition followed a motion by less than eight hours, D.E. 90.

4. *United States v. Small*, D. Del. No. 1:17-cr-27, D.E. 48 (02/07/2018 23:54): BRIEF/MEMORANDUM in Support by Fatou Small re [25] MOTION to Suppress Evidence (Malik, John). Although coded "crrespm" and "rel," the defendant's 11:54 p.m. brief supported a motion filed nearly six months before, D.E. 25. An opposition was originally due on September 29, 2017, D.E. 27. On September 28, 2017, the defendant filed a supporting brief, D.E. 28. On the following day, the defendant filed an agreed motion to extend until October 20, 2017, the due date for a response, D.E. 29, which the court approved five days later, D.E. 30. The government responded four days early, D.E. 31. At a January 3, 2018, hearing, both sides sought further briefing opportunities, and then they agreed to due dates of January 30 for a supporting brief, February 13 for an opposition brief, and February 20 for a reply, D.E. 38 (joint status report). The court approved the briefing schedule four days later, D.E. 40. On February 2, the court approved a consent motion filed on the previous morning to modify the due dates to February 6, 20, and 27, D.E. 44, 45. In the event, the defendant filed a nighttime supporting brief on February 7 and an amended brief at 5:07 p.m. on the following day, D.E. 48, 49. Following a February 16 telephone conference, the court modified the government's response

date to February 22, D.E. 50, and the government filed its brief at 5:09 p.m. on that date, D.E. 51. The defendant's reply brief was filed, apparently shortly before midnight, on a new due date of March 5, D.E. 52.

The District Court for the District of Massachusetts

A response is due two weeks after service of a motion, and a reply is due one week after service of a response. A filing generally must be made by 6:00 p.m. on the day due. Some opposition briefs were filed at night.

Motions were coded "motion" or "crmotion." Responses were coded "resp," "respm," "crrespm," or "respm-cr."

Due Dates in Civil Cases

Nighttime responses appeared to be relatively rare.

Five Randomly Selected Motions

Three extension motions were unopposed, and one was opposed four days after it was filed. A nighttime motion to amend a complaint was opposed in the afternoon, and a nighttime reply followed one week later.

1. *United States v. Seeley*, D. Mass. No. 1:16-cv-10935, D.E. 36 (02/26/2018 18:47): MOTION for Extension of Time to file Summary Judgment to 2/27/2018 by United States. (Schifano, L.). A summary judgment motion was originally due on January 10, D.E. 28 (docket text), 29. On January 10, the government filed, and the court approved, an afternoon assented-to motion to reset the due date as February 16, D.E. 30, 31 (docket text). On February 16, to accommodate investigation needs, the government filed an afternoon assented-to motion to reset the due date as February 23, D.E. 32, and the court granted the motion four days later, D.E. 33 (docket text). On February 23, to accommodate an unexpected health issue, the government filed a 5:22 p.m. motion to reset the due date as February 26, D.E. 34. Three days later, the court granted the motion, D.E. 35, and the government filed the 6:47 p.m. motion selected for this study, seeking to reset extend the due date by one day because of the health issue. On the following day, the government filed a 7:23 p.m. motion seeking new due dates of March 5 for the summary judgment motion, April 2 for an opposition, and April 16 for a reply, because of the continuing health difficulty, D.E. 37. Two days later, the court granted the motion, D.E. 38 (docket text), and ruled the motion selected for this study moot, D.E. 39 (docket text). The government filed its summary judgment motion at 5:04 p.m. on March 5, D.E. 40.

2. *Valle v. Powertech Industrial Co. Ltd*, D. Mass. No. 1:17-cv-10196, D.E. 45 (07/27/2018 20:16): MOTION to Amend [1] Complaint by William Valle. (Attachments: # (1) Exhibit A – Proposed First Amended Complaint, # (2) Exhibit B – Requests for Admission to Valle, # (3) Exhibit C – Interrogatories to Valle, # (4) Exhibit D – Interrogatories to Valle) (Himelfarb, David). The 8:16 p.m. motion to amend the complaint was opposed four afternoons later, D.E. 46. A 7:34 p.m. reply followed a week after that, D.E. 48.

3. *NRO Boston, LLC v. Arch Capital Funding*, D. Mass. No. 1:18-cv-10060, D.E. 69 (04/26/2018 15:25): MOTION for Extension of Time to 5/4/18 to File opposition to motions to dismiss *and additional pages* by Alice Indelicato, Jason Indelicato, NRO Boston, LLC, NRO Edgartown. (Eisenhaure, Rachel). The afternoon extension motion was granted on the following day, D.E. 70 (docket text).

4. *Shepardson v. Ditech Financial, LLC*, D. Mass. No. 1:18-cv-10332, D.E. 10 (03/07/2018 10:36): Assented to MOTION for Extension of Time to March 26, 2018 to File Responsive Pleading by Ditech Financial, LLC. (Hackett, Amy). The morning extension motion was granted on the following day, D.E. 11.

5. *Damon v. Wells Fargo Bank N.A.*, D. Mass. No. 4:18-cv-40004, D.E. 25 (03/02/2018 13:38): MOTION for Extension of Time to 03/16/2018 *for Defendant to File Opposition to Plaintiffs' Motion for Lis Pendens and Preliminary Injunction* by Wells Fargo Bank N.A. (Guillory Tadesse, Krystle) Modified on 3/12/2018 (Castles, Martin). The defendant's afternoon extension motion was opposed four mornings later by the pro se plaintiffs, D.E. 26, and granted six days after that by the court, D.E. 28 (docket text).

Five Randomly Selected Nighttime Responses

Two nighttime filings coded responses were actually supporting briefs filed within several minutes of the motions. One nighttime opposition was filed on the day due, and a nighttime reply was filed fifteen days after an opposition. The fifth nighttime response was an amended response concerning a deposition taken that day.

1. *Primarque Products Co., Inc. v. Williams West & Witt's Products Company*, D. Mass. No. 4:15-cv-30067, D.E. 280 (07/05/2018 23:25): REPLY to Response to [271] MOTION for Judgment NOV, *To Alter or Amend the Judgment, or Reduce the Award* filed by Williams West & Witt's Products Company. (Attachments: # (1) Exhibit A through I) (Lewis, Rodney). The 11:25 p.m. reply followed by fifteen days a 6:35 p.m. opposition, D.E. 276, which followed by two weeks a 5:49 p.m. motion, D.E. 271.

2. *Organic Mulch and Landscape Supply of New England v. PROBEC, Inc.*, D. Mass. No. 1:16-cv-10658, D.E. 65 (03/21/2018 21:42): AFFIDAVIT in Support re [63] MOTION to Reopen Case *Plaintiff's Motion (a) to Vacate Stay and Order of Administrative Closure as to Spiroflow Only and (b) to Amend Complaint Affidavit of Kenneth R. Berman* filed by Organic Mulch and Landscape Supply of New England, LLC. (Attachments: # (1) Exhibit 1 to Affidavit of Kenneth Berman, # (2) Exhibit 2 to Affidavit of Kenneth Berman, # (3) Exhibit 3 to Affidavit of Kenneth Berman, # (4) Exhibit 4 to Affidavit of Kenneth Berman, # (5) Exhibit 5 to Affidavit of Kenneth Berman, # (6) Exhibit 6 to Affidavit of Kenneth Berman, # (7) Exhibit 7 to Affidavit of Kenneth Berman, # (8) Exhibit 8 to Affidavit of Kenneth Berman, # (9) Exhibit 9 to Affidavit of Kenneth Berman, # (10) Exhibit 10 to Affidavit of Kenneth Berman, # (11) Exhibit 11 to Affidavit of Kenneth Berman, # (12) Exhibit 12 to Affidavit of Kenneth Berman, # (13) Exhibit 13 to Affidavit of Kenneth Berman, # (14)

Exhibit 14 to Affidavit of Kenneth Berman, # (15) Exhibit 15 to Affidavit of Kenneth Berman, # (16) Exhibit 16 to Affidavit of Kenneth Berman, # (17) Exhibit 17 to Affidavit of Kenneth Berman, # (18) Exhibit 18 to Affidavit of Kenneth Berman, # (19) Exhibit 19 to Affidavit of Kenneth Berman, # (20) Exhibit 20 to Affidavit of Kenneth Berman, # (21) Exhibit 21 to Affidavit of Kenneth Berman) (Berman, Kenneth). Although coded “resp” and “rel,” this 9:42 p.m. affidavit supported a motion filed eleven minutes earlier, D.E. 63. Afternoon oppositions were filed two weeks later, D.E. 70, 71, and an afternoon reply was filed one week after that, D.E. 74.

3. *Malden Transportation, Inc. v. Uber Technologies, Inc.*, D. Mass. No. 1:16-cv-12538, D.E. 264 (11/14/2018 22:21): Supplemental MEMORANDUM in Opposition re [259] Emergency MOTION to Quash *Subpoena of Gordon Gossage and to Preclude Defendants From Using the Deposition For Any Purpose In This Case* filed by Rasier, LLC, Uber Technologies, Inc. (Attachments: # (1) Exhibit) (Welsh, Michael). The 10:21 p.m. November 14 supplemental opposition brief followed by one day an afternoon opposition brief, D.E. 261, and that followed by one day a November 13 morning motion to quash a 7:48 p.m. November 12 subpoena for a November 14 deposition, D.E. 259. The motion was referred to a magistrate judge on the morning of November 14, D.E. 262 (docket text). According to the supplemental brief, the moving plaintiffs did not attend the third-party deposition noticed by the defendants. On January 2, 2019, the magistrate judge granted the motion to quash the deposition (docket text).

4. *Linehan v. Berryhill*, D. Mass. No. 1:17-cv-10433, D.E. 29 (01/19/2018 20:39): MEMORANDUM in Support re [28] MOTION to Alter Judgment filed by Nancy A. Berryhill. (Henry, Michael). Although coded “resp” and “rel,” this 8:39 p.m. January 19 brief supported a motion filed one minute earlier, D.E. 28. The response deadline was set as February 9, approving on February 5 a 5:11 p.m. February 1 assented-to motion for extension of time, D.E. 30, 31 (docket text). A 6:13 p.m. opposition was filed on February 10, D.E. 32. The court denied the motion in August, D.E. 33.

5. *Alvarez Figueroa v. Warden Plymouth Correctional Facility*, D. Mass. No. 1:18-cv-10097, D.E. 34 (04/23/2018 20:24): MEMORANDUM in Opposition re [14] MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Jaime Alvarez Figueroa. (Attachments: # (1) Affidavit) (Doyle, Kerry). The 8:24 p.m. opposition followed an afternoon motion by more than nine weeks, D.E. 14. Earlier, an afternoon opposition followed the motion by thirteen days, D.E. 23. On March 27, the court set April 23 as the deadline for opposition of an afternoon amended motion, D.E. 27, 32 (docket text). The plaintiff filed its amended opposition and an amended complaint on April 23, D.E. 33, 34.

Due Dates in Criminal Cases

Some opposition briefs were filed at night.

Five Randomly Selected Motions

Four motions, included one filed at night, were unopposed. The fifth motion was opposed on the afternoon of a reset due date.

1. *United States v. Mitchell*, D. Mass. No. 1:11-cr-10418, D.E. 56 (10/05/2018 14:14): MOTION to Continue *Supervised Release Revocation Hearing* as to Stephen Mitchell. (Gold, Ian). The afternoon motion was granted five days later, D.E. 57 (docket text).

2. *United States v. Gonzalez*, D. Mass. No. 1:15-cr-10338-32, D.E. 2778 (10/10/2018 20:27): MOTION to Continue *Sentencing* as to Edwin Gonzalez. (Bourbeau, Michael). The 8:27 p.m. motion in this sixty-one-defendant case was granted on the next day, D.E. 2780 (docket text).

3. *United States v. Chan*, D. Mass. No. 1:16-cr-10268-1, D.E. 174 (05/18/2018 13:13): Joint MOTION to Continue to 5/21/18 to Filing Jury Instructions & Motions in Limine as to Schultz Chan, Songjiang Wang by Schultz Chan. (Horstmann, Peter). The afternoon motion was granted on the day that it was filed, D.E. 176 (docket text).

4. *United States v. Aboshady*, D. Mass. No. 1:16-cr-10278, D.E. 143 (01/09/2018 13:53): Assented to MOTION for Leave to File *Sur-Reply* as to Moustafa Moataz Aboshady by USA. (George, Abraham). The afternoon motion was granted on the next day, D.E. 144 (docket text).

5. *United States v. Cintron*, D. Mass. No. 1:18-cr-10124, D.E. 76 (10/04/2018 15:08): MOTION to Suppress *Cell Phone Searches* as to Luis Cintron. (Attachments: # (1) Affidavit, # (2) Affidavit, # (3) Affidavit) (Tumposky, Michael). The October 4 afternoon suppression motion was followed on October 11 by a 5:52 p.m. assented-to motion to reset the response deadline from October 18 to October 19, D.E. 82, which the court granted on the next day, D.E. 83, 84. On October 18, the government filed an afternoon assented-to motion to extend the response deadline to October 23, D.E. 87, and the court granted the motion on the next day, D.E. 88, 89. On October 25, the court granted nunc pro tunc an October 23 afternoon assented-to motion for an extension of an additional day, D.E. 90, 97. The government filed its opposition to the suppression motion on the afternoon of October 24, D.E. 95.

Five Randomly Selected Nighttime Responses

Nighttime opposition briefs were filed on the same day, one week later, or two weeks later following the motions they opposed.

1. *United States v. Cadden*, D. Mass. No. 1:14-cr-10363-9, D.E. 1712 (11/05/2018 20:47): Opposition by USA as to Gene Svirskiy, Christopher M. Leary, Joseph M. Evanosky, Sharon P. Carter, Alla V. Stepanets, Gregory A. Conigliaro re [1711] MOTION in Limine *TO EXCLUDE TESTIMONY OF KANDIE DINO* (Strachan, Amanda). The 8:47 p.m. opposition brief followed the afternoon motion by about five hours, D.E. 1711.

2. *United States v. Hernandez-Escobar*, D. Mass. No. 1:15-cr-10338-3, D.E. 2150 (03/12/2018 22:00): Opposition by USA as to German Hernandez-Escobar, Noe Salvador Perez-Vasquez, Luis Solis-Vasquez, Jose Rene Andrade,

Hector Enamorado re [2082] MOTION to Sever, [2074] First MOTION to Sever *Case of German Escobar*, [2108] MOTION to Sever (Pasricha, Kunal). The 10:00 p.m. opposition brief was filed one week after an afternoon motion, D.E. 2074.

3. *United States v. Garske*, D. Mass. No. 1:16-cr-10233-2, D.E. 302 (02/19/2018 23:32): MEMORANDUM in Opposition by Michael Sedlak as to Donna M. Ackerly, Charles W. Garske, Richard J. Gottcent, Michael Sedlak re [260] MOTION in Limine to Admit Certain Evidence at Trial (Pertz, T.). The 11:32 p.m. opposition brief was filed two weeks after a morning motion.

4. *United States v. Sedlak*, D. Mass. No. 1:16-cr-10233-4, D.E. 367 (03/05/2018 21:54): Opposition by USA as to Donna M. Ackerly, Charles W. Garske, Richard J. Gottcent, Michael Sedlak re [366] MOTION EXCLUDE FOUNDATIONLESS HANDWRITTEN HEARSAY, [365] MOTION (Memorandum Regarding Anticipated Objections and Motion to Exclude Foundationless Handwritten Hearsay) (Attachments: # (1) Exhibit A, # (2) Exhibit B) (Frank, Stephen). The 9:54 p.m. opposition brief was filed on the same day as a 5:55 p.m. motion, D.E. 365.

5. *United States v. Halfond*, D. Mass. No. 1:16-cr-10320-3, D.E. 295 (04/10/2018 23:22): MEMORANDUM in Support by Christopher Halfond re [294] MOTION for Rule 11 Hearing (Barron, Kevin). Although coded “crre-spm,” this 11:22 p.m. brief supported the motion and was filed one day following a morning motion, D.E. 294.