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21-6550

IN THE SUPREME COURT OF THE UNITED STATES

Whalen, Lly.

APPELLANT / PETITIONER,

v.

El Hachti Abortion, (WARDEN)  
MARSHAL BASSET CORRECTIONAL CENTER,  
et al.,

CASE NO.

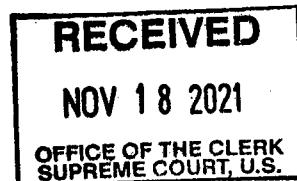
10TH CIR. NO. 21-6101

D.C. NO. 6:14-CV-00655-F

CAPITAL CASE

PETITIONER'S Supplemental Brief UNDER RULE 15.8  
TO DESCRIBE AN INTERVENING MATTER NOT AVAILABLE AT  
THE TIME OF THE LAST FILING OR REMOVAL FOR  
STAN OF EXECUTION SCHEDULED FOR 01/06/2022.

DATE:  
PRO-SE



WADE GREENE, LAY # 516263

OKLAHOMA STATE PENITENTIARY  


P.O. BOX 97

MCALISTER, OKLAHOMA 74502

## QUESTIONS PRESENTED:

1. SHOULD A FEDERAL PUBLIC DEFENDER BE ABLE TO FILE A PETITION FOR HABEAS CORPUS THAT IS FRAUDULENT, FOLLOWED BY CLAIMS OF MENTAL ILLNESS AND INCOMPETENCY UNDER THE SUPERVISION OF FEDERAL JUDGES IN THE DISTRICT COURTS AND CIRCUIT COURT; TO ACHIEVE CENSORSHIP OF A CITIZEN OF THE UNITED STATES DUE TO HIS CONSTITUTIONAL OPINIONS, CHANGING THE FACTS AT TRIAL CONTRARIE TO LAW?
2. SHOULD A FEDERAL DISTRICT COURT GRANT A NEXT FRIEND STATUS TO A CITIZEN OF THE UNITED STATES WITHOUT AN EVIDENTIARY HEARING TO DETERMINE COMPETENCY, OR IF THE GOVERNMENTAL ACTORS ARE USING MEANS TO CENSOR THE OPINIONS OF A CITIZEN OF A CONSTITUTIONAL NATURE THE SUBORDINATE COURTS OF THE UNITED STATES HOLD IN CONTENDET?
3. IF A PRO-SE PRISONER IS DETERMINED INCOMPETENT BY THE FEDERAL DISTRICT COURT, THROUGH THE APPOINTMENT OF NEXT FRIEND, HOW CAN THAT PRISONER ALSO BE HELD RESPONSIBLE FOR HIS CHOICE OR DECISION - NOT TO PROVIDE AN ALTERNATIVE METHOD OF EXECUTION. DOES *Klessig v. Cosey*, 576 U.S. 863, 871 (2015); AND *Buck-Lam v. Precythe*, 139 U.S. Ct. <sup>1112</sup> (2019), INTEND TO PUT AN INCOMPETENT, MENTALLY ILL PRISONER PLACED IN A VACUUM BY THE DISTRICT COURT IN A POSITION TO FACE EXECUTION IF HE MAKES A CHOICE THAT IS BEYOND HIS MENTAL ABILITIES?

LIST OF PARTIES

1. APPELLANT / PETITIONER WADE LAY

2. OKLAHOMA ATTORNEY GENERAL (John O'Connor)

APPELLEE / RESPONDENT

PARTIES OF INTEREST

1. FEDERAL PUBLIC DEFENDER (OKC, SUSAN OTTO - DIRECTOR)

2. RITA MARY KLEIN (WADE LAY's SISTER).

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INDEX OF APPENDICESATTACHMENTS:

1 ATTACHMENT CO-1 10TH CIRCUIT ORDER APPEALED

## TABLE OF AUTHORITIES

## SUPREME COURT CASES:

1. *Glossip V. Gross*, 576 U.S. 863, 874 (2015) \_\_\_\_\_
2. *Bucklew V. Precythe*, 139 S. Ct. 1112 (2019) \_\_\_\_\_

## CONSTITUTIONAL PROVISIONS, AMENDMENTS:

1. EIGHTH AMENDMENT

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THE OPINIONS IN THIS CASE HAVE NOT BEEN PUBLISHED

## JURISDICTION:

IT IS CRITICAL TO NOTE: THAT THE TENTH CIRCUIT IN THIS APPEAL HAS CHANGED THE PARTIES OF THE TITLE PAGE FROM Richard Glossip, v. Randy Chandler, TO Wade Lay, v. El Huhti Aboulnaas. THE CIRCUIT COURT ALSO ADDS ALL THE OTHER PLAINTIFFS TO THIS APPEAL BY A PRO-SE PARTY, AND SUBSEQUENTLY CONSOLIDATES THE APPEAL WITH ANOTHER APPEAL Jones, v. El Huhti Aboulnaas, 21-6129.

THE CIRCUIT COURT IN ACT OF SOTERFUGE, IN ORDER TO AVOID ADDRESSING THE ISSUES ON WHALE LAW'S APPEAL, AS ARTICULATED IN THIS CERTIORARI PETITION. IF THIS COURT WILL QUICKLY VIEW PG. 5 OF THE OCTOBER 15, 2021 ORDER NOW BEING APPEALED, AT FOOTNOTE NO. 1, THE CIRCUIT COURT CLAIMS:

"WE ORDERED THE PARTIES IN BOTH APPEALS TO ADDRESS THE PROPRIETY OF THE RULE 54(b) CERTIFICATION. WE HAVE CONSIDERED ALL THE RESPONSIVE FILINGS RECEIVED

FORISOKTION:

"TO DATE, WADE LAY HAS NOT FILED A RESPONSE TO THE ORDER,  
AND THE DEADLINE FOR DOING SO HAS NOW PASSED."

THE TENTH CIRCUIT COURT, LED BY CHIEF JUDGE TYMKO-

WICH HAS RECORDED A FALSE STATEMENT KNOWINLY

IN ORDER TO DENY WADE LAY A LAWFUL SUPPLICATION

AFFORDED TO HIM BY THE LAWS OF THE UNITED STATES. IT

IS CLEAR, PLACED ON THE RECORD, THAT WADE LAY'S JURIS-

DICTIONAL MEMORANDUM IS GIVEN TO ANNA WRIGHT

(FEDERAL PUBLIC DEFENDER IN OKC) ON OCTOBER 08, 2021. AT

AN ATTORNEY'S MEETING AT O.S.P.. MISS WRIGHT MAILED THE

JURISDICTIONAL MEMORANDUM ON OCT. 12, 2021, THE FINAL

DAY OF THE DEADLINE. (SEE OCT. 01, 2021 10TH CIRCUIT

ORDER). THE TENTH CIRCUIT COURT SIMPLY REFUSES TO ADDRESS

THE SINGULAR ISSUES OF WADE LAY'S APPEAL (21-6101), CONSUL-

## JURISDICTION:

DATED THE APPEAL WITH 21-6129.

THIS COURT HAS JURISDICTION IN ITS SUPERVISORY POWER TO  
ADJUDICATE THESE ISSUES ON CERTIORARI PETITION.

STATEMENT OF THE CASE!

WHAT IS SUPPLEMENTAL TO THE PETITION FILED AT O.S.B.

ON OCTOBER 10, 2021, THE INTERVENING MATTER IS

THE CLAIMS RAISED BY THE F.P.D. IN OKC BY SARAH

JERNIGAN (SUSAN OTTO - DIRECTOR), IN THE PITTSBURGH

COUNTY DISTRICT COURT OF MENTAL ILLNESS, THE CLAIMS

THAT HAVE BEEN FRAUDULENTLY SUPPORTED BY UNITED STATES

DISTRICT JUDGE FRICK. THE O.S.B.C. V.V.D. /OK. UNDER

JUDGE FRICK GRANTED NEXT FRIEND TO WADE LAY'S

SISTER THOMAS KEMP WITHOUT AN EVIDENTIARY /COMP-

ETENCY HEARING.

IN WADE LAY'S RESPONSE TO THE PROPOSITION OF NEXT

FRIEND BY THE F.P.D. HE OPPOSES THE INTERVENTION

UPON HIS RIGHTS, UNLESS AN EVIDENTIARY HEARING IS

VIEW TO ASCERTAIN THE TRUTH. WADE LAY DECLARATES  
TO JUDGE FRIOT IN HIS PLEADINGS ON TWO DIFFERENT  
OCCASIONS THAT: HE TRUST HIS SISTER COMPLETELY,  
BUT SHE HAD BEEN DECEIVED BY THE F.P.D. SISTER  
JERNIGAN WHOM ALSO BETRAYED HER CLIENT  
BY TELLING WADE LAY NOT TO PROVIDE AN ALTERNATIVE  
METHOD OF EXECUTION!

THIS HAS BEEN FILED IN THE U.S.D.C. W.D. OK., (SEE DOCS.  
Nos. 457, 458, 459, AND 460); IT HAS BEEN FILED IN THE  
TENTH CIRCUIT APPEAL (21-6701), IN THE JURISDICT-  
IONAL MEMORANDUM THE 10TH CIRCUIT REFUSED TO FILE  
AND CONSIDER UNTIL AFTER ITS OCTOBER 15, 2021  
ORDER.

THE CLAIMS OF MENTAL ILLNESS ARE FALSE, THE CLAIMS

HAVE NEVER BEEN ADJUDICATED BY A LAWFUL COMPREHENSIVE HEARINGS WHERE THE INDIVIDUAL IS ALLOWED TO DEFEND HIS MENTAL STATE.

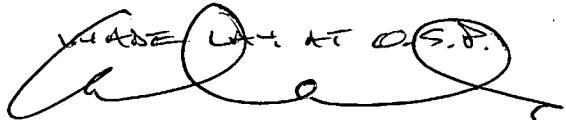
PETITIONER REITERATES HIS MOTION FOR STAY OF EXECUTION, A DEATH SENTENCE ACCOMPLISHED IN CONTRADICTION TO THE LAWS OF THE UNITED STATES AND THE STATE OF OKLAHOMA. THE EXECUTION IS SCHEDULED FOR JANUARY 06, 2022; AND, THE STATE INTENDS TO STRIP MADE LAY OF ALL OF HIS PROPERTY ON DECEMBER 02, 2021, EFFECTING HIS PRESENT MEDICAL CONDITION AND SUPPRESSING HIS ABILITY TO ACCESS COURTS, LEAVING HIM AT THE UNMERCIFUL HANDS OF PRISON OFFICIALS FOR (35) THIRTY FIVE DAYS. IT IS A CONDITION OF CRUEL AND UNUSUAL PUNISHMENT, VIOLATIONS

THE EIGHTH AMENDMENT TO THE UNITED STATES

CONSTITUTION.

PETITIONER BEGS THE COURT TO GRANT THE STAY  
OF EXECUTION, AND ORDER AN EVIDENTIARY HEARING  
TO UNVEIL THIS GREAT INJUSTICE CAUSED BY THIS CONSPIRED  
ACT INVOLVING STATE AND FEDERAL AGENTS.

RESPECTFULLY SUBMITTED

  
Wade Lat. A. O.S.P.

P.O. BOX 97

11/12/2021 McALESTER, OKLA. 74502

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 15, 2021

Christopher M. Wolpert  
Clerk of Court

WADE LAY,

Plaintiff - Appellant,

and

RONSON KYLE BUSH; BRENDA E. ANDREW; JEMAINE MONTEIL CANNON; JAMES A. CODDINGTON; BENJAMIN R. COLE; CARLOS CUESTA-RODRIGUEZ; SCOTT EIZEMBER; RICHARD S. FAIRCHILD; RICHARD E. GLOSSIP; CLARANCE GOODE; DONALD ANTHONY GRANT; JOHN M. GRANT; WENDELL A. GRISSOM; PHILLIP D. HANCOCK; JOHN F HANSON; MARLON D. HARMON; RAYMOND E. JOHNSON; JULIUS D. JONES; EMMANUEL A. LITTLEJOHN; RICKY RAY MALONE; MICA ALEXANDER MARTINEZ; ALFRED B. MITCHELL; JAMES D. PAVATT; GILBERT RAY POSTELLE; RICHARD ROJEM; JAMES RYDER; ANTHONY SANCHEZ; KENDRICK A. SIMPSON; MICHAEL DEWAYNE SMITH; KEVIN R. UNDERWOOD; TREMANE WOOD,

Plaintiffs - Amici Curiae,

v.

ABOUTANAA EL HABTI, Warden, Mabel Bassett Correctional Center, in her official capacity; SCOTT CROW, Director, ODOC, in his official capacity; RANDY CHANDLER; BETTY GESELL,

No. 21-6101  
(D.C. No. 5:14-CV-00665-F)  
(W.D. Okla.)

STORY OF THE ORIGIN, FORMATION, AND  
ADDITION OF THE CONFEDERATE STATES  
WITH NOTICES OF ITS PRINCIPAL FINANCIERS  
BY GEORGE T. CURTIS 1858  
VOL. II PAGE 41-43

Oklahoma Board of Correction, in her official capacity; JOSEPH GRIFFIN; F. LYNN HAUETER; KATHRYN A. LAFORTUNE, Oklahoma Board of Correction, in her official capacity; STEPHAN MOORE, Oklahoma Board of Correction, in his official capacity; CALVIN PRINCE, Oklahoma Board of Correction, in his official capacity; T. HASTINGS SIEGFRIED; DARYL WOODARD, Oklahoma Board of Correction, in his official capacity; TOMMY SHARP, Warden, OSP, in his official capacity; JUSTIN FARRIS, Acting Chief of Staff, ODOC, in his official capacity; MICHAEL CARPENTER, Chief of Field Operations, ODOC, in his official capacity; JUSTIN GIUDICE, Employee Assistance Program Coordinator, ODOC, in his official capacity,

Defendants - Appellees.

---

JULIUS D. JONES; DONALD ANTHONY GRANT; GILBERT RAY POSTELLE,

Plaintiffs - Appellants,

and

JOHN M. GRANT; JAMES A. CODDINGTON; BENJAMIN R. COLE; CARLOS CUESTA-RODRIGUEZ; NICHOLAS ALEXANDER DAVIS; RICHARD S. FAIRCHILD; WENDELL A. GRISSOM; MARLON D. HARMON; RAYMOND E. JOHNSON; EMMANUEL A. LITTLEJOHN; JAMES D. PAVATT; KENDRICK A. SIMPSON; KEVIN R. UNDERWOOD; BRENDAN E. ANDREW,

No. 21-6129  
(D.C. No. 5:14-CV-00665-F)  
(W.D. Okla.)

RICHARD E. GLOSSIP; SHELTON D. JACKSON; PHILLIP D. HANCOCK; ALFRED B. MITCHELL; TREMANE WOOD; WADE LAY; RONSON KYLE BUSH; SCOTT EIZEMBER; JOHN F HANSON; MICA ALEXANDER MARTINEZ; RICKY RAY MALONE; JIMMY DEAN HARRIS; PATRICK MURPHY; CLARANCE GOODE; ANTHONY SANCHEZ; MICHAEL DEWAYNE SMITH; JAMES RYDER; RICHARD ROJEM; JEMAINE MONTEIL CANNON,

Plaintiffs,

v.

ABOUTANAA EL HABTI, Warden, Mabel Bassett Correctional Center, in her official capacity; SCOTT CROW, Director, ODOC, in his official capacity; RANDY CHANDLER, Oklahoma Board of Corrections, in his official capacity; BETTY GESELL, Oklahoma Board of Corrections, in her official capacity; JOSEPH GRIFFIN, Oklahoma Board of Corrections in his official capacity; F. LYNN HAUETER, Oklahoma Board of Corrections in his or her official capacity; KATHRYN A. LAFORTUNE, Oklahoma Board of Corrections, in her official capacity; STEPHAN MOORE, Oklahoma Board of Corrections, in his official capacity; CALVIN PRINCE, Oklahoma Board of Corrections, in his official capacity; T. HASTINGS SIEGFRIED, Oklahoma Board of Corrections in his official capacity; DARYL WOODARD, Oklahoma Board of Corrections, in his official capacity; TOMMY SHARP, Warden, OSP, in his official capacity; JUSTIN FARRIS, Acting Chief of Staff,

ODOC, in his official capacity; MICHAEL CARPENTER, Chief of Field Operations, ODOC, in his official capacity; JUSTIN GIUDICE, Employee Assistance Program Coordinator, ODOC, in his official capacity,

Defendants - Appellees.

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## ORDER

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Before **TYMKOVICH**, Chief Judge, **MURPHY** and **MORITZ**, Circuit Judges.

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The plaintiffs are prisoners under Oklahoma death sentences who have challenged that state's execution protocol. The district court dismissed or granted summary judgment on all the claims raised in their operative Third Amended Complaint except Count II, which raised a direct Eighth Amendment challenge to the lethal injection protocol. On Count II, the district court granted summary judgment against those plaintiffs, including the appellants in these two appeals, who had failed to designate an alternative method of execution. See *Glossip v. Gross*, 576 U.S. 863, 877 (2015) (requiring plaintiffs who challenge an execution method on Eighth Amendment grounds to "identify an alternative that is feasible, readily implemented, and in fact significantly reduces a substantial risk of severe pain" (brackets and internal quotation marks omitted)). It set a trial date, which remains pending, for the remaining plaintiffs on Count II.

The district court then entered final judgment against the appellants in these two appeals under Fed. R. Civ. P. 54(b). They have appealed from that judgment. Appellant

Wade Lay also seeks a stay of execution, an evidentiary hearing, and a preliminary injunction. But because the district court's underlying partial summary judgment order is not a final order and the district court abused its discretion in certifying its judgment as final under Rule 54(b), we lack jurisdiction. We therefore dismiss these appeals.<sup>1</sup>

This court has jurisdiction to review a district court's "final decisions." 28 U.S.C. § 1291. "A final decision must dispose of all claims by all parties, except a decision may otherwise be considered final if it is properly certified as a final judgment under [Rule 54(b)]." *New Mexico v. Trujillo*, 813 F.3d 1308, 1316 (10th Cir. 2016). To properly certify an order as a final judgment under Rule 54(b), a district court must make two explicit determinations in its certification order: that the judgment is final and that there is no just reason for delay. *See id.*

The district court made both determinations. It later reiterated its conclusions in rejecting plaintiffs' challenge, brought in a post-judgment motion under Rule 59(e), to the Rule 54(b) certification. "We review *de novo* the district court's determination of finality as a question of law. We review the determination of no just reason for delay for abuse of discretion." *Id.* at 1317.

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<sup>1</sup> Appeal No. 21-6101 was abated pending the district court's decision on Fed. R. Civ. P. 59(e) motions to alter or amend the summary judgment ruling and vacate the Rule 54(b) certification. The district court largely denied those motions on October 12, 2021. Accordingly, the abatement is lifted. We ordered the parties in both appeals to address the propriety of the Rule 54(b) certification. We have considered all the responsive filings received to date. Wade Lay has not filed a response to the order, and the deadline for doing so has now passed.

*awed to AOPA Oct. 8, 2021*

Rule 54(b) permits the entry of a final judgment “as to one or more, but fewer than all, claims or parties.” The certification here is unusual in that the judgment resolved claims brought by some, but not all, of the plaintiffs, while leaving identical claims by the remaining plaintiffs for trial. We nevertheless conclude that the certification satisfies the “finality” requirement, because all the claims concerning the appellants in these appeals were finally adjudicated. *See, e.g., González Figueroa v. J.C. Penney Puerto Rico, Inc.*, 568 F.3d 313, 317 (1st Cir. 2009); *Nat'l Metalcrafters, Div. of Keystone Consol. Indus. v. McNeil*, 784 F.2d 817, 821 (7th Cir. 1986); *Crutcher v. Joyce*, 134 F.2d 809, 813-14 (10th Cir. 1943).

The more difficult issue is whether the district court abused its discretion in concluding that there was no just reason for delay. An important consideration in deciding whether to certify a final judgment under Rule 54(b) is to avoid piecemeal appeals, and particularly to avoid the possibility that an appellate court will be called upon to revisit the same issues decided in a previous appeal. *See Jordan v. Pugh*, 425 F.3d 820, 827 (10th Cir. 2005). Because the district court decided Count II against these appellants on a discrete ground (failure to proffer an alternate execution method), the issue of whether its judgment against them was correct on that ground presumably would not arise again in a separate appeal by the other parties from a judgment following a trial on Count II.

But the larger problem here involves the other nine claims shared by these appellants and those plaintiffs for whom final judgment will come only after trial. The district court certified its judgment as to all claims these appellants have asserted in this

action, so in these appeals they may presumably raise any issues they seek to present concerning any of those nine claims. Then, after trial, the other plaintiffs may also raise their issues involving the same claims. This raises a serious risk that “the historic federal policy against piecemeal appeals” would be flouted, and we “would have to decide the same issues more than once [in] subsequent appeals.” *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8 (1980).

The district court addressed this concern by dismissing the importance of the other nine claims, which it characterized as “boutique end-stage capital litigation claims” that “have gotten no traction in the federal courts.” *Glossip v. Chandler*, No. 5:14-cv-00665-F, CM doc. 493 at 16 (order on Rule 59(e) motions). It purported to take “[a] practical look at the claims asserted in this case” that demonstrated that Count II was “by far, the most consequential claim” asserted in the action. *Id.* We agree that courts should take a practical approach to certification under Rule 54(b). But the district court did not cite authority permitting it, as part of this pragmatic approach, to simply discount claims that might come before us piecemeal and repetitively as the result of its Rule 54(b) certification decision.

Of course, the policy of preventing piecemeal appeals must be weighed against the inequities that could result from delaying an appeal. *See, e.g., Stockman's Water Co. v. Vaca Partners, L.P.*, 425 F.3d 1263, 1265 (10th Cir. 2005). In its summary-judgment order, the district court cited the interest of the state and of crime victims in the timely enforcement of a sentence. *See Glossip*, No. 5:14-cv-00665-F, CM doc. 449 at 21. But its analysis on this point was conclusory. In reaching this conclusion, the district court

did not discuss the amount of additional time the state or crime victims would have to wait without a Rule 54(b) certification of the judgment (presumably a relatively short time frame, given the anticipated bench trial on Count II, which is currently set for February 28, 2022), or articulate why this additional delay outweighs the danger of piecemeal appeals in this death-penalty related case.

Although “a district court’s decision to grant certification under Rule 54(b) merits substantial deference,” *Stockman’s Water Co.*, 425 F.3d at 1265, we conclude the district court abused its discretion in certifying its judgment as final under Rule 54(b) in this case. Therefore, there is no final judgment, and we lack jurisdiction to consider these appeals. The appeals are dismissed. All pending motions in 21-6101 are denied as moot.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT  
Byron White United States Courthouse  
1823 Stout Street  
Denver, Colorado 80257  
(303) 844-3157  
Clerk@ca10.uscourts.gov

Christopher M. Wolpert  
Clerk of Court

Jane K. Castro  
Chief Deputy Clerk

October 15, 2021

Dale A. Baich  
Office of the Federal Public Defender for the District of Arizona  
850 West Adams Street, Suite 201  
Phoenix, AZ 85007

Harry P. Cohen  
Crowell & Moring  
590 Madison Avenue  
New York, NY 10022

Wade Lay  
Oklahoma State Penitentiary  
P.O. Box 97  
McAlester, OK 74502-0097  
# 516263  
Mr. Michael W. Lieberman  
Office of the Federal Public Defender for the District of Arizona  
850 West Adams Street, Suite 201  
Phoenix, AZ 85007

Jennifer M. Moreno  
Office of the Public Federal Defender  
District of Arizona - Capital Habeas Unit  
850 West Adams Street, Suite 201  
Phoenix, AZ 85007-2730

Gary Peterson  
Two Leadership Square  
211 North Robinson Avenue  
Suite 450 South  
Oklahoma City, OK 73102-0000

Michael K. Robles  
Crowell & Moring  
590 Madison Avenue  
New York, NY 10022

Emma Victoria Rolls  
Federal Public Defender's Office  
Capital Habeas Unit  
215 Dean A. McGee Avenue, Suite 707  
Oklahoma City, OK 73102

Adam Singer  
Crowell & Moring  
1001 Pennsylvania Avenue, NW  
Washington, DC 20004

James K. Stronski  
Crowell & Moring  
590 Madison Avenue  
New York, NY 10022

**RE: 21-6101, 21-6129, Lay, et al v. El Habti, et al**  
Dist/Ag docket: 5:14-CV-00665-F

Dear Counsel and Mr. Lay:

Enclosed please find an order issued today by the court.

Please contact this office if you have questions.

Sincerely,



Christopher M. Wolpert  
Clerk of Court

cc: David B. Autry  
Bryan Cleveland  
Charles Andrew Dickson III  
Andy N. Ferguson  
Patti Palmer Ghezzi  
John David Hadden  
Mark Henricksen  
Jeb Emmet Joseph  
Richard Mann  
~~Mithun Mansinghani~~  
Shawn Nolan  
Lexie P. Norwood

Zachary Paul West  
Randall John Yates

CMW/jm