Appendix A

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

October 7, 2026

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

THOMAS L. KIRSCH, *Circuit Judge*

No. 25-2471

MONTAE D. JACOBS,
Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,
Respondent-Appellee.

Appeal from the United States District Court for the Eastern District of Wisconsin.

No. 2:25-cv-01096-LA

Lynn Adelman, *Judge.*

ORDER

On consideration of the petition for panel rehearing and rehearing *en banc* filed by Petitioner-Appellant on September 21, 2026, no judge in regular active service has requested a vote on the petition for rehearing *en banc,* and all members of the original panel have voted to deny panel rehearing.

The petition for panel rehearing and rehearing *en banc* is therefore DENIED.

Appendix B

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted August 5, 2026
Decided August 18, 2026

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 25-2471

MONTAE JACOBS,
Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,
Respondent-Appellee.

Appeal from the United States District Court for the Eastern District of Wisconsin.

No. 25-CV-1096

Lynn Adelman,
Judge.

ORDER

Montae Jacobs has filed a notice of appeal from the denial of his motion under 28 U.S.C. § 2255 and an application for a certificate of appealability. This court has reviewed the final order of the district court, Jacobs's Seventh Circuit filings, and the record on appeal. We find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, the request for a certificate of appealability is DENIED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MONTAE JACOBS
Petitioner-defendant,

v.

Case No. 25-CV-1096
(Criminal Case No. 22-CR-91)

UNITED STATES OF AMERICA
Respondent-plaintiff.

RULE 4 ORDER

Petitioner-defendant Montae Jacobs moves pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. For the reasons that follow, I deny the motion summarily and dismiss this action.

I. FACTS AND BACKGROUND

On April 5, 2024, following a court trial, I found petitioner guilty of sex trafficking and related offenses. (R. 114 at 4.)[1] The evidence presented at trial demonstrated that petitioner relentlessly recruited women and girls to engage in acts of commercial sex for his financial benefit, even while he was in custody facing sex trafficking charges. Five victims testified at trial, four adults and one who was a minor when defendant targeted her. (R. 150 at 34.)

Petitioner controlled AV-1 through physical violence and threats, requiring her to meet a quota and pushing her to bring in more money by robbing customers, which repeatedly put her in harm's way. He also threatened to report her prostitution activities to her probation officer, to get her sent back to prison, and to her family, particularly her brother with whom she

[1]Unless otherwise noted, all record citations are to the underlying criminal case.

lived, so the brother would kick AV-1 out. After his arrest, petitioner also tried to get AV-1 to recant her statements about him trafficking her, going so far as to draft a false affidavit for her. (R. 150 at 34-35.)

Petitioner controlled AV-2 through fraud, coercion and threats, rather than physical violence. He required AV-2 to give him all the money she made from her "dates," as well as her food stamps, assuring AV-2 this was just for safekeeping. AV-2 soon came to understand petitioner had no intention of ever returning it. He isolated her from her family; controlled when and how much she ate; and controlled her drug use, giving her only enough not to get sick from withdrawals. (R. 150 at 35.)

JV-1 was 16 or 17 when she first came into contact with petitioner. He soon started trying to get her to work for him doing sex dates, offering to let her and her sister use a car he owned to do so. JV-1 ended up not performing any commercial sex acts at petitioner's direction, but he was certainly persistent, attempting to call her 38 times between August 15, 2021, and August 28, 2021, while she was still 17 years old. (R. 150 at 35-36.)

Petitioner recruited AV-3 while in custody, after a friend of her's who was incarcerated with petitioner gave him AV-3's contact information. He called and wrote her frequently about sex trafficking. He also pushed her to travel to Texas to prostitute there. At one point, when she was not doing what he wanted, petitioner told AV-3, "Don't think you can't be touched, just because I'm in here." (R. 150 at 36.)

Petitioner engaged in similar conduct with AV-4. She was also first contacted by petitioner after a friend of her's who was in custody with petitioner gave him her contact information. His communications with her soon turned to making money, including through prostitution, with detailed instructions on what he wanted her to do and how to do it. (R. 150

at 36.) The pre-sentence report (PSR) detailed a number of other females petitioner pimped or attempted to pimp, as well as others he attempted to recruit. (R. 150 at 36.)

On August 22, 2024, I sentenced petitioner to a total of 240 months in prison, a term below his guideline range of 360 months to life. (R. 136 at 2; R. 150 at 38, 41.) I found a substantial prison sentence necessary to reflect the seriousness of the offense, particularly the violence and cruelty directed at AV-1 and the coercion of AV-2; to promote respect for the law and to deter others from engaging in this conduct, which is often portrayed as lucrative; and to deter defendant and protect the public from him, given his relentless efforts to recruit women and girls into trafficking, which continued even after he was taken into custody, and given his lengthy prior record and poor performance on past periods of community supervision. (R. 150 at 38.) As detailed in the PSR, defendant had a significant prior record comprised of a variety of different crimes involving drugs, extreme recklessness, firearms, and violence. He was on state supervision during part of the time he engaged in the instant offense conduct. (R. 150 at 36-37.)

For several reasons, I found a term somewhat below the range sufficient. First, I compared petitioner's case to that of other sex traffickers prosecuted in this district and considered the concept of marginal deterrence—that the harshest sentences should be reserved for the most culpable behavior. (R. 150 at 38-39, citing United States v. Newsom, 402 F.3d 780, 785-86 (7th Cir. 2005); United States v. Patrick, 707 F.3d 815, 820 (7th Cir. 2013).) Second, I considered the length of petitioner's prior sentences, in the two to four year range. It is appropriate for a court, when considering the type of sentence necessary to protect the public and deter future misconduct, to note the length of any previous sentences imposed. Generally, a lesser period of imprisonment is required to deter a defendant not previously

subject to lengthy incarceration than is necessary to deter a defendant who has already served serious time yet continues to re-offend. United States v. Qualls, 373 F. Supp. 2d 873, 877 (E.D. Wis. 2005). While a much longer sentence was plainly needed to deter petitioner following his conviction in this case, I did not see a need to jump to 25 or 30 years. (R. 150 at 40.) Third, I took into account that petitioner had been in custody for several years serving other sentences. (R. 150 at 40.) Finally, I took into account his high school education, history of drug use, mental health issues, and recent attempts to address emotional health concerns. (R 150 at 41.)

Ultimately, while petitioner was not as violent as some other traffickers, or as financially successful, the longevity of his activities and his unusual degree of persistence demanded a significant sentence. Under all the circumstances, I found a sentence of 240 months sufficient but not greater than necessary to satisfy the purposes of sentencing. This sentence reflected the seriousness of the offense, balancing the violence used against AV-1 and the coercion used against AV-2 with the fact that the conduct directed at the others was mostly talk; it balanced the nature and extent of his prior record against the relatively short sentences he previously served; and it balanced the need to send a message to petitioner and others that this kind of conduct will not be tolerated against the aspects of this particular case making it less aggravated than some sex trafficking cases. (R. 150 at 41.)

Petitioner filed a notice of appeal (R. 138) but later dismissed his direct appeal (R. 166). On July 28, 2025, he filed the instant pro se motion under § 2255.

II. SECTION 2255 STANDARDS

Section 2255 permits a federal prisoner to attack his sentence on the "ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of

the maximum authorized by law, or is otherwise subject to collateral attack." 28 U.S.C. § 2255(a). "Relief under § 2255 is available only in extraordinary situations, such as an error of constitutional or jurisdictional magnitude or where a fundamental defect has occurred which results in a complete miscarriage of justice." White v. United States, 8 F.4th 547, 552 (7th Cir. 2021) (internal quote marks omitted).

Further, § 2255 is not a substitute for direct appeal. Barnickel v. United States, 113 F.3d 704, 706 (7th Cir. 1997). "A claim cannot be raised for the first time in a §2255 motion if it could have been raised at trial or on direct appeal." McCoy v. United States, 815 F.3d 292, 295 (7th Cir. 2016). Defaulted claims will not be heard on collateral attack unless the prisoner shows both cause and prejudice for the default. Id. Absent a showing of both cause and prejudice, procedural default will only be excused if the prisoner can demonstrate that he is "actually innocent" of the crimes of which he was convicted. Id.

Ineffective assistance of counsel claims are an exception and may be raised in a collateral proceeding under § 2255, whether or not the prisoner could have raised the claim on direct appeal. Massaro v. United States, 538 U.S. 500, 504 (2003). To succeed on a claim of ineffective assistance, the prisoner must demonstrate that (1) his attorney's performance fell below an objective standard of reasonableness, and (2) he suffered prejudice as a result. Strickland v. Washington, 466 U.S. 668, 687-88 (1984). With respect to the performance prong, the prisoner must overcome the strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance. He must identify the specific acts or omissions of counsel that he believes constituted ineffective assistance; the court will then determine whether such acts or omissions fell outside the wide range of professionally competent assistance. Wyatt v. United States, 574 F.3d 455, 458 (7th Cir. 2009). Regarding

the prejudice prong, the prisoner must demonstrate a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. It is not enough to show that the errors had some conceivable effect on the outcome of the proceeding; counsel's errors must be so serious as to deprive the prisoner of a fair trial, a trial whose result is reliable. Harrington v. Richter, 562 U.S. 86, 104 (2011).

Pursuant to Rule 4(b) of the Rules Governing Section 2255 Proceedings, the district court must promptly examine a § 2255 motion. If it plainly appears from the motion, any attached exhibits, and the record of the prior proceedings that the prisoner is not entitled to relief, the judge must dismiss the motion. In addition, a hearing is not necessary if the prisoner makes allegations that are vague, conclusory, or palpably incredible, rather than detailed and specific. Martin v. United States, 789 F.3d 703, 706 (7th Cir. 2015).

III. DISCUSSION

Petitioner alleges four grounds for relief in his § 2255 motion.

A. Ground One: Ineffective Assistance of Counsel

Petitioner claims that his trial counsel provided ineffective assistance. In support, he first notes that at sentencing his lawyer said: "Sounds good. Your Honor, first of all, I need to apologize to the Court because I'm not that experienced in federal court laws." (Motion at 4; R. 150 at 11:4-6.) However, petitioner omits the next sentence of the transcript, where counsel stated: "Normally, let's see, the Government makes their recommendations and their -- their sentencing arguments, and then I get to respond to those or address those." (R. 150 at 11:6-9.) In context, then, counsel was referring to my practice of having the defense speak first at a

sentencing hearing, not federal law in general.[2] In any event, petitioner does not elaborate on how counsel's unfamiliarity with federal practice prejudiced his defense. See United States v. Limehouse, 950 F.2d 501, 503 (7th Cir. 1991) (denying ineffective assistance claim where the prisoner failed to explain how alleged errors prejudiced her defense and noting that conclusory allegations do not satisfy Strickland's prejudice component).

Petitioner next includes a list of things counsel allegedly failed to do. (Motion at 4.) However, he fails to explain how any of these omissions caused prejudice.

Petitioner contends that counsel "submitted no exculpatory evidence to the trial exhibit (no material (texts, phone call recordings, letters, etc.) which would have favored the outcome of the trial. The defendant Brady rights were not exercised by his counsel." (Motion at 4.) Where a prisoner rests his ineffective assistance claim on the failure of his trial counsel to adduce evidence or call witnesses, the prisoner cannot meet his burden absent a specific, affirmative showing as to what the missing evidence or testimony would have been. United States ex rel. McCall v. O'Grady, 908 F.2d 170, 173 (7th Cir. 1990). In other words, the prisoner cannot simply state that the evidence would have been favorable; "self-serving speculation will not sustain an ineffective assistance claim." United States v. Ashimi, 932 F.2d 643, 650 (7th Cir. 1991). Petitioner provides no specifics as to the favorable evidence counsel should have presented here. In an attachment to the motion, petitioner points to a portion of the sentencing transcript where I rejected his pro se objections to the PSR, including a claim

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[2]Rule 32 requires that the defendant and his lawyer, the attorney for the government, and any victim(s) be permitted to speak at a sentencing hearing. Fed. R. Crim. P. 32(i)(4). The Rule mandates no order, although it has been my typical practice to have the defense go first. In response to counsel's statement quoted above, I asked the government to go first in this case. (R. 150 at 11:10-18.)

that text messages contradicted a victim's grand jury testimony. (Motion at 5; R. 150 at 6:8-10.) Petitioner did not present then, and does not present now, the exculpatory texts he claims exist. Nor does he describe, in even general terms, what this evidence is or how it might undermine confidence in the outcome. Finally, petitioner makes no claim that the government possessed exculpatory evidence that his lawyer failed to obtain under Brady v. Maryland, 373 U.S. 83 (1963).

Petitioner states that his lawyer filed no pre-trial motions, "such as evidentiary, Franks, psychiatric hearing." (Motion at 4.) When a claim of ineffective assistance is based on counsel's failure to file a pre-trial motion, the prisoner must show the motion was meritorious. United States v. Cieslowski, 410 F.3d 353, 360 (7th Cir. 2005). Petitioner does not even attempt to make such a showing here.

Petitioner notes that counsel failed to comply with the court's order at docket #130. (Motion at 4.) That order set a deadline for the filing of sentencing motions, memoranda, or other materials. While counsel did not file a sentencing memorandum, petitioner fails to explain how he was prejudiced. He does not, for instance, contend that any argument that should have been presented in writing, as opposed to orally at the hearing, would have created a reasonable probability of a lower sentence. See Clay v. United States, 311 F. Supp. 3d 911, 919 (N.D. Ill. 2018) ("Where counsel's alleged error occurred during the sentencing phase . . . the petitioner must show that there was a reasonable probability that he received additional prison time because of counsel's error.") (internal quote marks omitted).

Petitioner contends that counsel "failed to challenge all elements of sex trafficking besides the 2nd element." (Motion at 4.) The elements of sex trafficking under 18 U.S.C. §§ 1591(a)(1), (b)(1) are: (1) the defendant knowingly recruited, enticed, harbored, transported,

provided, obtained, or maintained by any means the victim identified in the indictment; (2) the defendant knew or recklessly disregarded the fact that force, threats of force, fraud, or coercion, would be used to cause the victim to engage in a commercial sex act;[3] and (3) the offense was in or affecting interstate or foreign commerce. The William J. Bauer Pattern Criminal Jury Instructions of the Seventh Circuit 748 (2023 ed.). Petitioner does not elaborate on what counsel should have done regarding the first and third elements, nor does he explain how any such efforts would create a reasonable probability of a different outcome.[4] See Prewitt v. United States, 83 F.3d 812, 819 (7th Cir. 1996) (conclusory allegations are insufficient to warrant further proceedings on an ineffective assistance claim).

Petitioner indicates that counsel "made no special findings in the final pretrial hearing." (Motion at 4.) He does not elaborate, and it is impossible for me to determine whether this alleged failure constitutes ineffective assistance. He also indicates counsel "violated 4 prongs of representation." (Motion at 4.) This claim, too, is impossibly vague.

Petitioner contends that counsel failed to investigate or interview alleged victims and witnesses. (Motion at 4.) To show ineffective assistance from a failure to investigate, the prisoner must make a comprehensive showing of what the investigation would have produced.

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[3]When the victim is a minor, the second element is modified: the defendant knew or recklessly disregarded the fact that the victim was under 18 years of age and would be caused to engage in a commercial sex act; or had a reasonable opportunity to observe the victim who had not yet attained the age of 18, and knew or recklessly disregarded the fact that the victim would be caused to engage in a commercial sex act.

[4]During closing arguments, defense counsel did argue that some of petitioner's activities were local and did not involve interstate commerce. (Trial Tr. at 742:16-19.) It is also worth noting that, during his trial testimony, petitioner primarily addressed the second element, admitting that he assisted the victims by, e.g., crafting ads and driving them around, but denying that he forced or coerced the victims to participate in commercial sex acts (and that he knew JV-1's real age). (Trial Tr. at 583-85, 590-93, 595-98, 612-13, 645:5-8.)

Granada v. United States, 51 F.3d 82, 85 (7th Cir. 1995). Petitioner offers nothing here.

Petitioner states that counsel failed to object to the government's motion in limine. (Motion at 4.) That motion sought an order under Fed. R. Evid. 412 excluding evidence of any prior or subsequent sexual behavior of the alleged victims in this case, and a ruling under Fed. R. Evid. 902(14) that the digital forensic images of four cellular phones were authentic copies of the contents of those phones. (R. 99 at 1.) Petitioner fails to explain how his lawyer should have opposed those requests. It is well-settled that Rule 412 generally excludes victims' prostitution histories in sex trafficking cases, see, e.g., United States v. Groce, 891 F.3d 260, 266-67 (7th Cir. 2018), and Rule 902(14) permits admission of data copied from an electronic device if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11). The government provided the required certification here. (R. 99-1.)

Petitioner notes that counsel submitted no trial or sentencing memorandum. (Motion at 4.) However, he fails to explain what counsel should have said and how it might have changed the outcome.

Finally, petitioner contends that counsel failed to effectively utilize the Confrontation Clause to impeach witnesses and failed to object when perjury was detected. In order to demonstrate ineffective assistance for failing to impeach a witness, the prisoner ordinarily must make a specific, detailed showing as to the content of the evidence which should have been presented to the jury, and, where necessary, a showing as to the reasons for trial counsel's failure to do so. O'Grady, 908 F.2d at 174. Petitioner makes no such showing here. Nor does he identify the alleged perjury in the record or explain how counsel should have objected to that alleged perjury.

In sum, petitioner's ineffective assistance claims are conclusory and speculative, rather than detailed and specific. Those claims will be denied without a hearing.

B. Ground Two: Lack of Federal Jurisdiction

Petitioner claims that the court lacked subject matter and personal jurisdiction. (Motion at 6.) The claim is procedurally defaulted and, in any event, entirely frivolous. See United States v. Benabe, 654 F.3d 753, 767 (7th Cir. 2011) (citing United States v. Phillips, 326 Fed. Appx. 400, 400 (7th Cir. 2009) (dismissing jurisdiction arguments as frivolous because federal courts have subject matter and personal jurisdiction over defendants brought before them on federal indictments alleging violations of federal law)); United States v. Bjorkman, 270 F.3d 482, 490 (7th Cir. 2001) ("[D]istrict judges always have subject-matter jurisdiction based on any indictment purporting to charge a violation of federal criminal law."); Hugi v. United States, 164 F.3d 378, 380 (7th Cir. 1999) ("Subject-matter jurisdiction in every federal criminal prosecution comes from 18 U.S.C. § 3231, and there can be no doubt that Article III permits Congress to assign federal criminal prosecutions to federal courts. That's the beginning and the end of the 'jurisdictional' inquiry."). To the extent petitioner blames his attorney(s) for failing to raise this claim directly (R. 1 at 7, 10), he cannot demonstrate prejudice. See Warren v. Baenen, 712 F.3d 1090, 1104 (7th Cir. 2013) ("Counsel is not ineffective for failing to raise meritless claims.").

As part of this claim, petitioner also states that he never had a preliminary hearing. (Motion at 6; see also Motion at 11.) This case commenced with an indictment, so petitioner was not entitled to a preliminary hearing under Fed. R. Crim. P. 5.1(a). See United States v. Werbrouck, 589 F.2d 273, 275 (7th Cir. 1978) ("[A] preliminary examination is not available to a defendant who has already been indicted as in this case.").

C. Ground Three: Sentence Imposed in Violation of Tenth Amendment

Petitioner argues that the Commerce Clause does not authorize Congress to punish felonies. (Motion at 9.) This claim, too, is defaulted, and also lacking any merit. See United States v. Adams, 132 F.4th 259, 265 (3rd Cir. 2025) (rejecting Tenth Amendment challenge to § 1591); see also United States v. Khan, 771 F.3d 367, 374 (7th Cir. 2014) (discussing Congress's broad authority under the Commerce Clause). To the extent petitioner blames his attorney(s) for failing to raise this claim directly (R. 1 at 9, 10), he cannot demonstrate prejudice. See Warren, 712 F.3d at 1104 ("Counsel is not ineffective for failing to raise meritless claims.").

As part of this claim, petitioner also states that the government did not prove territorial jurisdiction and venue, which are essential elements. (Motion at 9.) Venue is not treated like an element, see United States v. Muhammad, 502 F.3d 646, 652 (7th Cir. 2007), and courts have held that venue challenges are not cognizable under § 2255, see Williams v. United States, 582 F.2d 1039, 1041-42 (6th Cir. 1978). In any event, the indictment sufficiently alleged (R. 1, 73), and the trial evidence sufficiently established, venue in this district (see, e.g., Trial Tr. at 21, 25-26, 202, 268, 274, 319, 403.)

D. Ground Four: Violation of First Amendment

Petitioner argues that in his communications with the victims he shared thoughts and ideas with no specific direction, and that those communications constituted protected expression under the First Amendment. (Motion at 8.) This claim is also defaulted, and petitioner does not cite, nor have I found, any authority for the proposition that § 1591 violates the First Amendment. See United States v. Biancofiori, No. 16 CR 306-1, 2018 U.S. Dist.

LEXIS 4821, at *7-11 (N.D. Ill. Jan. 11, 2018) (rejecting First Amendment challenges to § 1591 and collecting cases).[5]

IV. CONCLUSION

THEREFORE, IT IS ORDERED that petitioner's motion (R. 1) is denied, and this case is dismissed. The Clerk is directed to enter judgment accordingly.

Pursuant to Rule 11(a) of the Rules Governing Section 2255 Proceedings, the district court must issue or deny a certificate of appealability ("COA") when it enters a final order adverse to a § 2255 petitioner. In order to obtain a COA, the petitioner must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A substantial showing requires a demonstration that reasonable jurists could debate whether (or, for that matter, agree that) the motion should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further. Slack v. McDaniel, 529 U.S. 473, 483-84 (2000). For the reasons stated above, petitioner cannot make such a showing, so I decline to issue a COA.

Dated at Milwaukee, Wisconsin, this 5th day of August, 2025.

/s/ Lynn Adelman
LYNN ADELMAN
District Judge

[5]At trial, defense counsel elicited testimony from petitioner about his First Amendment rights. (Trial Tr. at 607:5-11.) During closing, counsel argued that petitioner was exercising his freedom of speech with certain communications. (Trial Tr. at 735:9; see also Trial Tr. at 744:9-21, government response.) However, petitioner raised no First Amendment claim on direct appeal. To the extent petitioner blames his appellate counsel for failing to raise this claim and/or telling him to raise it under § 2255 (R. 1 at 8, 10), he cannot demonstrate prejudice. It is also worth noting that I considered the nature of petitioner's conduct in imposing sentence. (R. 150 at 41:16, noting that petitioner used violence against AV-1, but his "conduct directed at the others was mostly talk".)

United States District Court

EASTERN DISTRICT OF WISCONSIN

JUDGMENT IN A CIVIL CASE

MONTAE D. JACOBS,
Petitioner-Defendant,

v.

UNITED STATES OF AMERICA,
Respondent-Plaintiff.

CASE NUMBER: 25-CV-1096
(Criminal Case No. 22-CR-91)

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that petitioner's §2255 motion is denied and this case is DISMISSED.

8/5/2025
Date

Linda Klemm
Interim Clerk

/s/ Alexis H.
(By) Deputy Clerk