APPENDIX A

S.D.N.Y. – N.Y.C.
20-cv-10057
Cote, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 21st day of May, two thousand twenty-six.

Present:

Debra Ann Livingston,
Chief Judge,
Robert D. Sack,
Susan L. Carney,
Circuit Judges.

In Re: Bernard L. Madoff Investment Securities, LLC,

Debtor,

****

Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC,

Plaintiff-Appellee,

v. 25-3036

Malcolm H. Sage, in his Capacity as Partner or Joint Venturer of Sage Associates and Sage Realty, Individually as Beneficiary of Sage Associates and Sage Realty, and as the Personal Representative of The Estate of Lillian M. Sage,

Defendant-Appellant,

Lynne Florio,

Non-Party-Appellant,

Sage Associates, et al.,

Defendants,

SIPC,

Intervenor.

Appellee, through counsel, moves for summary affirmance and to dismiss. It is hereby ORDERED that the motion for summary affirmance is GRANTED because the appeal "lacks an arguable basis in either law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Pillay v. INS*, 45 F.3d 14, 17 (2d Cir. 1995) (per curiam); *see also United States v. Davis*, 598 F.3d 10, 13 (2d Cir. 2010).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

Catherine O'Hagan Wolfe

UNITED STATES SECOND CIRCUIT COURT OF APPEALS

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 1st day of July, two thousand twenty-six.

In Re: Bernard L. Madoff Investment Securities, LLC,

Debtor.

ORDER

Docket No: 25-3036

Appellants, Lynne Florio and Malcolm H. Sage, filed a motion for panel reconsideration, or, in the alternative, for reconsideration *en banc*. The panel that determined the appeal has considered the request for reconsideration, and the active members of the Court have considered the request for reconsideration *en banc*.

IT IS HEREBY ORDERED that the motion is denied.[1]

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

Catherine O'Hagan Wolfe

[1] Chief Judge Lohier is disqualified and took no part in the consideration or decision of the motion.

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IRVING H. PICARD, Plaintiff, -v- SAGE ASSOCIATES, et al., Defendants.	20cv10057 (DLC) OPINION AND ORDER

APPEARANCES:

Movants Malcolm Sage and Lynne Florio, appearing pro se

For trustee Irving H. Picard:
David J. Sheehan
Seanna R. Brown
James H. Rollinson
Baker & Hostetler LLP
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DENISE COTE, District Judge:

In April 2022, a judgment was entered in favor of the trustee and plaintiff, Irving H. Picard. Defendant Malcolm Sage and his wife, nonparty Lynne Florio, have moved to vacate the judgment pursuant to Rule 60(d)(3), Fed. R. Civ. P. That motion is denied.

Background

This action resulted from the Ponzi scheme perpetrated by Bernard L. Madoff. In December 2008, Irving H. Picard was appointed as trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS"), and was tasked with recovering the assets that Madoff had misappropriated. As part of that effort, the trustee pursued recovery of transfers Madoff made to certain BLMIS customers that had withdrawn more money from their accounts than they had deposited into them, who are referred to as "net winners" -- though, to be sure, they too are victims of Madoff's scheme. The net equity of BLMIS customers is generally determined through the "net investment method." See In re Bernard L. Madoff Inv. Sec. LLC, 654 F.3d 229, 233-35 (2d Cir. 2011).

The trustee determined that the defendants in this action were "net winners" and brought adversary proceedings against them in bankruptcy court. The trustee sought to hold the individual defendants -- Malcolm Sage ("Sage") and his siblings, Martin Sage and Ann Sage Presser -- jointly and severally liable as general partners of the entity defendants, Sage Associates and Sage Realty.

The defendants asserted two central arguments in the prior litigation that are relevant here. First, they argued that the net investment method should not apply to them because, unlike other BLMIS customers, they directed Madoff to purchase the securities that were reflected in their BLMIS accounts. Second, they argued that there should be no joint and several liability because Sage Associates and Sage Realty are neither partnerships nor de facto partnerships.

An Opinion of May 18, 2021 by the Honorable Alison J. Nathan withdrew the reference of the relevant proceedings from bankruptcy court. Picard v. Sage Realty, No. 20cv10057, 2021 WL 1987994, (S.D.N.Y. May 18, 2021). This action proceeded to a bench trial that ended on February 2, 2022. An Opinion of April 15, 2022 by the Honorable John F. Keenan entered judgment in favor of the trustee and found the defendants jointly and severally liable in the amount of $16,880,000. Picard v. Sage Realty, No. 20cv10057, 2022 WL 1125643 (S.D.N.Y. Apr. 15, 2022). Judge Keenan determined, inter alia, that it was appropriate to apply the net investment to the defendants and that Sage Associates and Sage Realty are de facto partnerships. Following an appeal by Sage, that decision was affirmed by the Second Circuit. In re Bernard L. Madoff Inv. Sec. LLC, No. 22-1107, 2023 WL 5439455 (2d Cir. Aug. 24, 2023).

On July 1, 2025, Sage and his wife, nonparty Lynne Florio, filed a pro se motion, accompanied by a lengthy memorandum, requesting that the judgment be vacated pursuant to Rule

60(d)(3), Fed. R. Civ. P.[1] This action was reassigned to this Court on July 10. The trustee filed an opposition on August 8. On August 29, Sage and Florio filed a reply accompanied by declarations. Sage filed an additional letter on September 12, and Florio filed an additional letter on September 25.

Discussion

Rule 60(d)(3) permits a court to "set aside a judgment for fraud on the court." Fed. R. Civ. P. 60(d)(3). This "embraces a narrow and extreme set of conduct which defiles the court itself so that the judicial machinery can not perform in the usual manner." In re Enf't Of Philippine Forfeiture Judgment Against All Assets Of Arelma, S.A., -- F.4th --, 2025 WL 2383067, at *11 (2d Cir. Aug. 18, 2025) (citation omitted). To demonstrate fraud on the court, a movant must show that (1) the opposing party "interfered with the judicial system's ability to adjudicate impartially"; and (2) the acts of the opposing party were "of such a nature as to have prevented the [movant] from fully and fairly presenting a case or defense." Id. (citation omitted). The latter element reflects "the deference owed to

[1] Sage and Florio explain that the trustee is seeking to recover their assets in other litigation. In particular, the trustee seeks to recover two-thirds of their home, which was combined from three apartments, by having it separated back into three apartments and obtaining two of those apartments.

the finality of judgments and respect for the adversarial process." Mazzei v. The Money Store, 62 F.4th 88, 94 (2d Cir. 2023). Fraud on the court must be proven by clear and convincing evidence. Marco Destin, Inc. v. Levy, 111 F.4th 214, 219-20 (2d Cir. 2024).

Relief is not available under Rule 60(d)(3) if the movant "had a reasonable opportunity to uncover the fraud" in the prior litigation, or if the movant otherwise "could have prevented the fraudulent judgment through proper diligence." Id. at 220 (citation omitted). Moreover, "neither perjury nor nondisclosure [of discovery], by itself, amounts to anything more than fraud involving injury to a single litigant." Gleason v. Jandrucko, 860 F.2d 556, 560 (2d Cir. 1988).

Sage and Florio have not shown that there was fraud on the court. At its core, their motion reasserts arguments that the defendants pursued throughout this litigation: that there should be no joint and several liability, and that the net investment method should not apply. But those arguments have been considered and rejected, both by the trial court and on appeal. Sage and Florio have not shown that the judicial machinery failed to perform in the usual manner. Their effort to reopen litigation of the merits through a Rule 60(d)(3) motion must be rejected.

Sage and Florio also accuse the trustee's counsel of perjury, misciting precedent, and various other misconduct. They claim that such conduct had the effect of misleading Judge Keenan and a unanimous panel of three judges of the Second Circuit. Those arguments fail. To begin with, the record reflects that Judge Keenan and the Second Circuit were thoroughly engaged with the issues in this litigation when they rejected the defendants' arguments. In any event, even if Sage and Florio's accusations against the trustee's counsel were proven, including their accusations of perjury, that still would not rise to the extreme level of fraud on the court. The judicial system remained impartial in its adjudication of the dispute, and there is no basis to disturb the finality of the judgment.

Sage and Florio argue as well that the defendants were not given a sufficient opportunity to present certain evidence in the prior litigation. But, even if those assertions were proven, that also would not amount to fraud on the court. Moreover, Sage and Florio have not shown that the defendants, who were represented by competent counsel, were prevented in the prior litigation from fairly presenting their case or deprived of the usual opportunities to seek to redress the evidentiary issues that Sage and Florio describe.

Sage and Florio also request relief other than vacatur of the judgment, including dismissal of other litigation. Rule 60(d)(3) does not provide for such relief.

Conclusion

Sage and Florio's July 1, 2025 motion to vacate the judgment pursuant to Rule 60(d)(3) is denied.

Dated: New York, New York
October 16, 2025

DENISE COTE
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IRVING H. PICARD, Plaintiff, -v- SAGE ASSOCIATES, et al., Defendants.	20cv10057 (DLC) ORDER

DENISE COTE, District Judge:

An Opinion of April 15, 2022 by the Honorable John F. Keenan entered judgment in favor of the trustee and plaintiff, Irving H. Picard. That decision was affirmed by the Court of Appeals. On July 1, 2025, defendant Malcolm Sage and his wife, nonparty Lynne Florio, filed a pro se motion requesting that the judgment be vacated pursuant to Rule 60(d)(3), Fed. R. Civ. P. An Opinion of October 16 denied that motion. On October 30, Sage and Florio filed a motion for reconsideration of the October 16 Opinion.

The standard for granting a motion for reconsideration is "strict." Cho v. Blackberry Ltd., 991 F.3d 155, 170 (2d Cir. 2021) (citation omitted). "A party may . . . obtain relief only when the party identifies an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." Id. (citation omitted). "[R]econsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked -- matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." Id. (citation omitted). A motion for reconsideration is "not a vehicle for relitigating old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise taking a second bite at the apple." Analytical Survs., Inc. v. Tonga Partners, L.P., 684 F.3d 36, 52 (2d Cir. 2012) (citation omitted).

Sage and Florio do not identify any intervening case law, pertinent information that the Court overlooked, or clear error. Their motion instead seeks to relitigate old issues, which is not a basis for reconsideration.

Sage and Florio primarily argue that the Court "overlooked" evidence proving that Sage Associates and Sage Realty were not partnerships or de facto partnerships. But such arguments were raised prior to the October 16 Opinion and, indeed, were a focal point of the prior litigation. The Court did not overlook these arguments in the October 16 Opinion. Even if Sage and Florio were now able to prove that evidence supports their legal arguments regarding partnership status, that cannot suffice to show fraud on the court.

Sage and Florio also accuse the trustee of engaging in misrepresentation and misconduct. Such arguments were also raised prior to the October 16 Opinion and were not overlooked. As explained in the October 16 Opinion, Sage and Florio's accusations against the trustee and his counsel cannot alter the conclusion that there has been no showing of fraud on the court.

Sage and Florio bring new requests for relief under Rules 59(e), 60(b), and 60(d)(1), as well the Court's inherent powers. These are new theories that may not be considered on a motion for reconsideration. Even if they could, Sage and Florio have not shown that relief would be available under any of these grounds. Accordingly, it is hereby

ORDERED that Sage and Florio's October 30, 2025 motion for reconsideration is denied.

Dated: New York, New York
November 4, 2025

Denise Cote

DENISE COTE
United States District Judge

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In Re: Bernard L. Madoff Investment Securities, LLC,

Debtor,

Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC,

Plaintiff - Appellee,

Docket No. 25-3036

v.

Malcolm H. Sage, in his Capacity as Partner or Joint Venturer of Sage Associates and Sage Realty, Individually as Beneficiary of Sage Associates and Sage Realty, and as the Personal Representative of The Estate of Lillian M. Sage,

Defendant - Appellant,

Lynne Florio,

Non-Party - Appellant,

Sage Associates, Martin A. Sage, in his Capacity as Partner or Joint Venturer of Sage Associates and individually as Beneficiary of Sage Associates, Ann M. Sage Passer, in her Capacity as Partner or Joint Venturer of Sage Associates and individually as Beneficiary of Sage Associates,

Defendants,

SIPC,

Intervenor.

MEMORANDUM OF LAW IN OPPOSITION TO MOTION FOR SUMMARY AFFIRMANCE, AND TO DISMISS THE APPEAL, AND TO STAY THE BRIEFING SCHEDULE

I. Introduction

Summary affirmance is an extraordinary and disfavored remedy, particularly at the pre-briefing stage. It is reserved for the rare case in which an appeal presents no substantial question and may be resolved without engagement with the record or the issues identified for review. This is not such a case.

This appeal arises from the denial of relief under Rule 60(d)(3), a doctrine concerned not with ordinary trial error, but with the integrity of the judicial process itself. The appeal presents unresolved questions regarding the legal consequences of alleged misconduct by court-appointed fiduciaries and their counsel, and the proper scope of fraud-on-the-court doctrine where officer representations are alleged to have shaped judicial outcomes.

The Trustee's motion does not engage those questions. Instead, it relies on characterizations of Appellants' appeal and seeks to preempt merits review through summary disposition. That approach is inconsistent with the limited role of summary affirmance and underscores why full briefing is required.[1]

II. The Governing Standard for Summary Affirmance

Summary affirmance is a *"rare exception to the completion of the appeal process,"* available only where an appeal is truly frivolous and presents no substantial question. *United States v. Davis*.[2] The remedy is particularly disfavored at the pre-briefing stage, where the Court has not yet had the benefit of full merits briefing or engagement with the record.

It is typically reserved for appeals that are facially meritless or present no substantial question—most often arising in criminal or quasi-criminal contexts, in forma pauperis proceedings, or cases where jurisdiction or standing is plainly absent.

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[1] Pursuant to Second Circuit Local Rule 27.1(b), Appellants timely respond within ten days to the Trustee's motion.

[2] 598 F.3d 10, 13–14 (2d Cir. 2010).

This appeal does not arise from an ordinary dispute between private parties, but from proceedings involving court-appointed fiduciaries exercising extraordinary authority, where unresolved legal questions—and the manner in which they were bypassed in the name of finality—bear directly on the integrity of the judicial process beyond the interests of the immediate parties.

Where such authority is exercised with limited transparency and without ordinary mechanisms of appellate scrutiny, summary disposition risks converting unresolved legal premises into de facto doctrine.

As Wright & Miller observe, although appeal from a final judgment is ordinarily available as of right, that principle has been "*weakened by the occasional practice of dismissing appeals as frivolous,*"[3] a practice reserved for exceptional circumstances and not for the routine resolution of contested legal questions.

Consistent with that understanding, sanctions or dismissal for frivolity are the exception rather than the rule, and should not be used in a manner that discourages appeals presenting open or substantial legal issues.[4]

This Court has repeatedly cautioned that summary disposition is inappropriate where an appeal raises unresolved legal questions, involves fact-intensive issues, or turns on the proper application of legal standards not squarely adjudicated below. In such circumstances, the ordinary appellate process—briefing followed, if appropriate, by argument—is the proper course.

As a matter of record, the authorities the Trustee invokes to justify pre-briefing dismissal arise from criminal, immigration, prisoner, or quasi-penal enforcement contexts. Those settings involve extraordinary gatekeeping authority, where appeals are often foreclosed as a matter of law. The cases do not involve ordinary civil appeals raising unresolved legal questions, nor do they concern allegations of

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[3] Edward H. Cooper, 15A *Federal Practice & Procedure* § 3901 (3d ed. Sept. 2025 update) p4.

[4] See *Moore's Federal Practice* § 338.2 et. seq., observing that summary disposition prior to full briefing is appropriate only in the rare case where an appeal presents no substantial question, and cautioning that courts should not short-circuit the ordinary appellate process where unresolved legal issues are raised.

misconduct by court-appointed officers acting under the authority of an Article III court. Their logic does not transfer to the posture presented here.[5]

The Trustee's motion asks the Court to depart from those settled principles. It seeks summary affirmance before briefing in an appeal arising under Rule 60(d)(3), and in a case where the district court expressly declined to adjudicate several of the issues now presented for review. That posture alone places this appeal outside the narrow category suitable for summary disposition.

III. The Trustee's Motion Does Not Engage the Issues Presented for Appeal

The Trustee's motion does not address the appeal actually before the Court. Instead, it proceeds by characterizing Appellants' position as an effort to relitigate issues previously decided and by asserting, in general terms, that the appeal is frivolous.

That characterization is not responsive to the Statement of Issues on Appeal. Appellants do not seek review of the underlying merits judgment. The appeal is directed to the district court's denial of Rule 60(d)(3) relief and raises specific questions concerning the legal standard applied, the district court's failure to adjudicate identified issues, and the treatment of alleged misconduct by court-appointed officers and their counsel.

The Trustee's motion does not meaningfully engage those questions. It does not analyze the issues as framed, does not address the district court's acknowledged refusal to adjudicate certain arguments, and does not explain why those unresolved questions may be disposed of without briefing. Summary affirmance cannot rest on generalized assertions about prior litigation history when the appeal challenges the legal sufficiency of the Rule 60(d)(3) analysis itself.

Where a motion for summary affirmance substitutes characterizations for engagement with the issues identified for appeal, it confirms—rather than

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[5] For ease of reference, Appellants include a brief table summarizing the authorities cited by the Trustee in support of summary disposition and the contexts in which those authorities arise. See Addendum A.

undermines—the need for merits briefing, as the Trustee's own framing here demonstrates.

The cases cited by the Trustee do not support pre-briefing summary affirmance in the posture presented here. *United States v. Davis*[6] denied summary affirmance and held that such relief is appropriate only where an appeal is "truly frivolous," cautioning that even appeals presenting straightforward merits questions must proceed through ordinary briefing. *Joshua v. United States*[7] involved a jurisdictionally barred action in which no cognizable legal right was identified and no issue could be adjudicated on the merits. *Dasler v. Knapp*[8] arose from an in forma pauperis screening dismissal in which the appeal lacked any arguable legal basis and did not involve allegations of fraud on the court by officers of the court. As reflected in Addendum A, none of the Trustee's authorities involved a fully litigated civil appeal invoking Rule 60(d)(3), or arose from a record in which the district court declined to adjudicate the issues now presented for appellate review. As a matter of fact and law, the Trustee's authorities confirm that summary affirmance is reserved for appeals presenting no adjudicable issue at all, not for appeals raising unresolved institutional questions requiring full briefing.

The Trustee's motion, made nearly two months after the filing of the notice of appeal and statement of issues on appeal, further illustrates this problem by recasting issues that were never adjudicated as "rejected theories," and by attributing findings—such as the existence of "overwhelming evidence"—that do not appear in the district court's opinion. Judge Cote did not determine whether the Partnerships constituted partnerships as a matter of governing law, nor did she adjudicate the statutory and doctrinal arguments advanced by Appellants that, under New York statutory and decisional law, partnership status was legally impossible—arguments the district court did not address. Whether those issues were properly reached, addressed, or resolved is itself among the questions Appellants seek to present on appeal, and cannot be disposed of through characterizations offered in a pre-briefing motion.

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[6] 598 F.3d 10 (2d Cir. 2010)
[7] 17 F.3d 378 (Fed. Cir. 1994)
[8] 2024 WL 4924967 (2d Cir. 2024)

The structure of the Trustee's motion itself underscores this concern in a separate and independent way. The Trustee has submitted a memorandum of law nominally confined to the motion format, while simultaneously advancing a detailed merits narrative through a lengthy declaration and voluminous attachments. This device permits the appellee to expand its presentation beyond what is contemplated by appellate motion practice, effectively presenting an unrebutted merits brief before Appellants have filed the opening brief prescribed by the Federal Rules. Summary affirmance is not intended to function as a vehicle for such front-loaded merits advocacy, nor to allow an appellee to shape the appellate record through declarations and selective exhibits in advance of briefing. Where unresolved legal questions are presented, the ordinary briefing process is not a dispensable formality but a structural safeguard.

IV. Officer-of-the-Court Conduct and the "Even If Perjury" Framing

The Trustee's motion relies heavily on the district court's observation that "even if" allegations of perjury by the Trustee's counsel were proven, such conduct would not rise to the level of fraud on the court. That framing materially understates the scope of Appellants' Rule 60(d)(3) motion. Appellants did not allege perjury in isolation, but a broader course of conduct by court-appointed fiduciaries and their counsel—including intentional factual fabrication, concealment and mischaracterization of record evidence, manipulation of procedural posture, interference with Appellants' ability to obtain review, and misuse of fiduciary authority—collectively alleged to have corrupted the adjudicative process itself.[9] The district court did not address whether alleged misconduct by a court-appointed trustee or his counsel, acting in a fiduciary capacity to the court, requires a different analysis under Rule 60(d)(3), an omission the Trustee now treats as dispositive. Whether such conduct may be deemed legally irrelevant as a matter of law is a merits question that cannot be resolved through summary affirmance.

As this Court has explained, fraud upon the court is not ordinary evidentiary misconduct but conduct that *"defile[s] the court itself"* or is *"perpetrated by officers of the court so that the judicial machinery cannot perform in the usual*

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[9] See Appellants' Memorandum of Law in Support of Motion for Relief Under Rule 60(d)(3), No. 20-cv-10057, ECF No. 126 ¶¶ 13–14(a)–(g),and Appellants' Rule 60(d)(3) Notice of Motion and Motion, No. 20-cv-10057, ECF No. 125 ¶¶ 1–25 bearing on the Trustee's contention that the appeal is frivolous.

manner its impartial task of adjudging cases." Kupferman v. Consolidated Research & Mfg. Corp..[10]

V. The Request to Stay Briefing Improperly Entrenches Procedural Asymmetry

The Trustee's request to stay briefing rests on the same flawed premise as the motion itself—that this appeal is suitable for pre-briefing disposition. Staying the briefing schedule would leave the Trustee's extensive submission unrebutted while denying the filing of Appellants' opening brief, thereby entrenching an unrebutted one-sided narrative before the Court has received the structured presentation contemplated by the appellate rules. Efficiency concerns cannot justify suspending the ordinary appellate process where the propriety of summary disposition is itself contested.

VI. Conclusion

Fraud on the court *"involves far more than an injury to a single litigant"* and implicates *"the integrity of the judicial process itself." Hazel-Atlas Glass Co. v. Hartford-Empire Co.*.[11]

The Trustee has not met the demanding standard for summary affirmance. This appeal raises unresolved legal questions concerning the application of Rule 60(d)(3), the scope of fraud-on-the-court doctrine, and the treatment of alleged misconduct by court-appointed officers—issues that cannot be resolved through pre-briefing motion practice.

Summary disposition is therefore inappropriate, and the appeal should proceed through the ordinary appellate process.

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[10] 459 F.2d 1072, 1078 (2d Cir. 1972).
[11] 322 U.S. 238, 246 (1944).

Dated: February 6, 2026
New York, New York

Respectfully submitted,

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Addendum A
(For the Court's Convenience)
Authorities Cited by the Trustee in Support of Summary Disposition

Case:	Citation	Was Summary Disposition Granted?	Criminal or Criminal-Adjacent Context
Pillay v. INS	45 F.3d 14 (2d Cir. 1995)	Yes	Yes — immigration removal following violent felony convictions
Der-Rong Chour v. INS	578 F.2d 464 (2d Cir. 1978)	Yes	Yes — immigration enforcement; repeated attempts to evade deportation
Joshua v. United States	17 F.3d 378 (Fed. Cir. 1994)	Yes	Yes — incarcerated prisoner; claim barred by lack of jurisdiction
Dasler v. Knapp Note: Dasler v Knapp did not involve an FRCP 60(d) motion as alleged but a Vermont Rule of Civil Procedure 60(b)	2024 WL 4924967 (2d Cir. 2024) and 2021 WL 4134398 n 2	Yes	Yes — pro se civil action with criminal-related allegations; summary disposition on threshold grounds (mootness / no substantial question), not a merits civil appeal.
United States v. Potamkin Cadillac Corp.	689 F.2d 379 (2d Cir. 1982)	Yes (after briefing)	Yes — government enforcement action with sanctions
Tafari v. Hues	473 F.3d 440 (2d Cir. 2007)	No	Yes — prisoner litigation under the PLRA
Neitzke v. Williams	490 U.S. 319 (1989)	No	Yes — prisoner IFP screening
United States v. Davis	598 F.3d 10 (2d Cir. 2010)	No (after briefing)	Yes — criminal appeal

Certificate of Compliance

Pursuant to Federal Rule of Appellate Procedure 27(d)(2), Appellants certify that this Memorandum of Law in Opposition contains approximately 1,750 words, excluding the caption, signature block, and addendum, and therefore complies with the applicable type-volume limitation.

Dated: February 6, 2026
New York, New York

Respectfully submitted,

Lynne Florio

Malcolm Sage

CERTIFICATE OF SERVICE

I, Lynne Florio, do hereby certify that on February 6, 2026, I served a true and correct copy of the Memorandum of Law in Opposition to Appellee's Motion for Summary Affirmance and to Dismiss Appeal, and to Stay the Briefing Schedule upon counsel for the Trustee, Baker & Hostetler LLP, by filing the foregoing document electronically through the Court's ECF system,

by electronic mail to:

Seanna Brown, sbrown@bakerlaw.com,
David Sheehan, dsheehan@bakerlaw.com,
James Rollinson, jrollinson@bakerlaw.com,

and via priority mail to:

Michael L. Post, Esq. at

Michael L. Post
CEO/President/General counsel SIPC
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Washington, D.C. 20006

Dated: February 6, 2026
New York, New York

Lynne Florio