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September 21, 2026

✓ Senior Justice i/c of Second Circuit
✓ Hon. Mrs. Sonia Sotomayor
Supreme Court Of The United States
1 First Street N.E.
Washington, D.C. 20543

Dear Senior Hon. Justice Mrs. Sonia Sotomayor

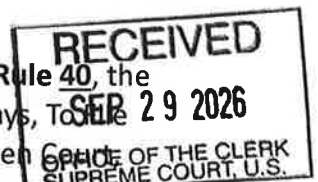
RE: **ALROY RICHARDS, *Petitioner-Appellant* vs. CITY OF NEW YORK NYC COMPTROLLER, Mr. SCOTT STRINGER Or Successor's Nominee (now in the Administration of NYC Mayor, Mr. Zohran Mamdani), Mr. JOHNATHAN PASTORIZA (Police Officer), Mr. D. SAROFF (Police Officer), *Respondents-Respondents***
Second Circuit, Case #2024_2634, &, SDNY, Case #20CV03348
EXTENSION OF TIME, Of SIXTY (60) DAYS, From Due Date, To File The WRIT OF CERTIORARI

Good day to the Hon. Senior Justice, Mrs. Sonia Sotomayor:

Request For EXTENSION OF TIME Of SIXTY (60) DAYS, From Due Date

The Petitioner-Appellant, Pro-Se, is making this **Special Appeal**, based on the exigencies, **unchallenged facts, Rules, Laws, Evidences**, and severe, and repeated Breaches, by the Respondents. In view of the Petitioner-Appellant, significant information presented by Litigant, throughout, have either been over looked, or, ignored. Even despite **Case Laws, Court Practices**, unchallenged positions of the Litigant, and **irrefutable Evidences**. Petitioner-Appellant had complied with all Rules, Filing Deadlines, and made all required Motions, including, but not limited to, **Default Judgements**.

Under **Local Rules 40.2**, and **Federal Rules of Appellate Procedures (FRAP) Rule 40**, the Petitioner-Appellant is submitting this request, for an Extension Of Time, of Sixty Days, To file The **Writ Of Certiorari**. In the Second Circuit's **June 11, 2026 Oral Arguments**, in Open Court, one Senior Honourable Justice, was notably absent (unavoidably), in the. Though not restricted to only this: Subject to Procedural Orders, which fall under **FRAP 27 (b)**, and the Second Circuit's **Local Rule 27.1**, being reasonably a reply, by Litigant, at least by fourteen (14) days. In addition, **Federal Rule of Civil Procedure (FRCP) 59 (e)**, wherein, Litigant is proposed that the Second Circuit Court reconsider, and at least **Amend** its **Judgement**, or, to, **Modify** its **Judgement**, and



which, may not necessarily be suggesting a Jury Trial, otherwise, though Litigant would have appreciate said, as advocated for Jury Trial, throughout. As per the Motions, and Arguments, from the Petitioner-Appellant throughout, and via his Interrogatories submitted to the SDNY – four (4), each numbering over fifty (50) questions each (Records). January 27, 2024. Doc. 160 connecting. Needing critical Testimonials, and that, such crucial requests (Records), have not been considered by the Lower Court (not limited to this). No Subpoenas granted, by the Lower Court, at the District (SDNY) level, and no Jury Trial. Required, and, reasonably common place, given the case progression, and volume of Litigant's Exhibits, and, other requests.

Given the voluminous nature of the file, which compose five (5) separate and equally telling facts, which remain indisputable, and unchallenged, from the Respondents, the five (5) minutes allotted, to the Petitioner-Appellant, for Oral Arguments, on June 11, 2026, would have been severely insufficient, as Pro-Se. The Respondents did not even turn up for, neither presented Oppositions, to Open Court (in-person) Oral Arguments, which is usually required. Respondents chose not to inform the Petitioner-Appellant, neither this honourable Court, prior, neither on the morning, of their intended absence. As if "pre-determined, otherwise". "Frightening", to the Petitioner-Appellant, as Court process (in Court), will show, and reflect. Developments approached by Litigant based on composite filing, on bases of Continuing Violations (Case Laws, Laws/Statutes, Court Practices). At least fifteen (15) minutes, or, even twenty (20) minutes, would have been adequate; though matters not limited to this point. On the five (5) main points, at least three (3) to four (4) minutes would have been required, for each point, in view of the Pro-Se Litigant, relative to Oral Arguments.

As with the Respondents many frequent, and excesses (time lapses, without Agreements, Orders, nor previous writings) failure to meet Deadlines, Defaults should have been reasonably been accorded, to Petitioner-Appellant, as per Case Laws, Laws/Statutes, and Court Practices. Records, in the Case File, inclusive of formal Motions made, by Litigant, not limited to Certificates of Defaults, inter alia. Significant Breaches. FRCP 56 (c), 56 (e), and Rule 60. Statute -Barred Responses or Statutes of Limitations Breaches, which were not applied, in Litigant's favour. Included are Failure to co-operate with Rules of Disclosure, by the Respondents, being Rules: 4 (d)(1), 26 (a)(1), 26 (2) (a), 33 (2)(B), 37 (a)(1), 37 (a)(3), etc., and, not limited to these, and non-submission of CCTV images, and Internal Reports (I.A.B.); a must. Seen throughout, and directly, and repeatedly highlighted, by the Petitioner-Appellant; example, doc. 55, p. 80. Professional operations, or, Disciplinary Records, of the Individual Respondents, as repeatedly requested by the Petitioner-Appellant, denied, throughout. Normally decided by the Courts, given recurring and significant deliberate actions, by Respondents, whom, on acting, or, not acting, on petty slights. Deliberate, and that Respondents continued to exhibit excesses, and abuse of authority, with respect to the Petitioner-Appellant, by the Opposition - throughout.

Continuing example, In regard to the preceding paragraph. Third Amended Complaint, by the Litigant, submitted on December 14, 2021. Doc. 55. Ninety four (94) points. Respondents' Response on January 3, 2022. Doc. 66. Court's Order at doc. 68, dated January 11, 2022, stipulating that the Respondents have not Responded. The SDNY then Ordered the

Respondents to respond (do so), by January 18, 2022. Never complied with. Therefore, Certificates of Defaults, were submitted by the Petitioner-Appellant. Dated February 4, 2022, as docs. 82-83. Filed March 1, 2022. Again, never complied with, by the Respondents. Burden of Proof still not met, by the Respondents, throughout. Respondents have Waived Their Rights, To Any Defenses, as Non-Responding Respondents, all along, and Fair Notices, by Litigant. Rule 8 (f). Plain. Standards Of Review, under Rule 28 (a)(5).

Previous to that, Summons and Complaints, Served by the Petitioner-Appellant, on May 4, 2020, and Services Returned, on May 21, 2020. Docs. 6-7. Notice of Appearance (one line) from the main Respondents, dated May 14, 2020. Individual Respondents, Messrs. Johnathan Pastoriza, and D. Saroff, did not Respond, and, should not be over looked, as due May 26, 2020. Unprecedented. Responses, by the Individual Respondents, Outside Statutes of Limitations, made on June 8, 2020, and, June 15, 2020, as doc. 11, and, docs. 14-16. Again, facts. Records/Exhibits. Statutes/Laws, Case Laws, and Court Practices exist, to dispense Decisions, when such happens, and, would not have been Prejudicial to the Respondents. Prejudiced to the Petitioner-Appellant, if Default not given. In courting the Records, Amended Complaint still made, by the Petitioner-Appellant, on November 24, 2020, as docs. 27-28, using said Exhibits, prior; agreed, adopted, authorised. Motions To Dismiss, made by the Respondents, but Court's Order, dated December 18, 2020, Denying Motions To Dismiss, as moot. Correctly so, and should have been implemented throughout.

In the interests of Pro-Se status, Petitioner-Appellant had sought the Second Circuit's clarification, in stating, on page 3, first paragraph, of its July 10, 2026 Order, (quoting) - "We (this Court) refer only as necessary, to explain our (this Court's) Decision to, Affirm in Part, and, Dismiss in Part" (end of quote). Leaving Petitioner-Appellant quite baffled, and whom have already been shocked, and bombarded, by the many distinct, and irrefutable injustices, handed out, to this Litigant, by the Respondents. A reconvening, by this honourable Court, with the Parties, would have been a perfect way, in the Remedies. No Opposition Papers were presented, by the Respondents, to the important Open Court Oral Arguments, held on June 11, 2026. Further, no revelations were made, as to the Judge that authored the Opinions, in the Order, dated July 10, 2026, nor were any information offered, as to which Judge made what comments, which is common (Court Practices, Case Laws). Important.

Returning to the Exhibits, in the Lower District (SDNY) Court, and Petitioner's-Appellant's brief Summary, on each segment. Remain factual, presented by Litigant, and argued throughout, and which are not in dispute. No arrest of clearly identifiable, and pointed out suspect, and identified by name, the perpetrator of Assault and Battery, on the Petitioner-Appellant, on March 9, 2018. Police has the powers, not the Litigant, and that, the Litigant's Statements, witnesses, and clear, and available CCTV images, not taken into considerations. Unprecedented. Aggressor has known address, "admitted being in the wrong", and whom knowingly acted unprovoked. Exhibits. The illegal profiling, and retaliatory Illegal Traffic Stop, of Litigant, in Brooklyn (N.Y.), on October 15, 2018. Records/Exhibits. Claimed throughout, even pre-Court, and via Internal Affairs Bureau (I.A.B.). Where are the Reports, and C.C.T.V. images, from all angles (police truck, body cameras, at least seven (7) business places, quoted nearby,

and from which detailed map drawn, by the Petitioner-Appellant. Records. SDNY's Court Order of May 30, 2023, doc. 100, show culpability of the Respondents concerned. Extreme fear, and Mental Anguish also set in, as the Police Officer(s) in question, attempted to pull gun(s), at the Petitioner-Appellant. November 1, 2019 Exoneration, doc. 55, p. 36, in Traffic Court, of Litigant. Again, Records.

Followed by the non-existent, concocted, willfully wicked, and untrue Red Light, and Speeding violations, received in the U.S.P.S. Mail, January 2019, reportedly for non-existent February 12, 2018, and March 28, 2018 Traffic allegations. Records/Exhibits. Must, and, cannot be over looked, in any circumstances. Later withdrawn, by the City of New York, April 2023, or, near four (4) years after, despite writing, Emailing, calling City of New York's external assigned Counsels, Linebarger, Gogger, Blair, and Sampson, throughout, from October 19, 2019 – November 18, 2021. Records tell (Exhibits). Devastating. Reference to the Records/Exhibits. Note Timings. Crucial, and should have been decided in Litigant's favour, or, left to a Jury, to Decide.

Next was the illegal towing of Petitioner's-Appellant's Motor Vehicle, in Brooklyn (N.Y.), on July 16, 2019. Timings common? Not to mention another towing, of said Motor Vehicle, on June 20, 2019, in Brooklyn (N.Y.). Stated in the Records. Timings, but the continuing adverse actions did not end there. Petitioner's-Appellant's Registration Plates were illegally confiscated, from Motor Vehicle, by the City of New York, on July 16, 2019, and never returned, to this day. Records, example, doc. 27-1, pgs. 64-65. No qualifying reasons. Timings. Formal apologies, from the City of New York, are evident, and will be shown, as, main Respondents even correcting matter on July 16, 2020, retroactive to one (1) year, prior, to July 16, 2019. Records. Signed, dated letter, in the Records/Exhibits. Critical.

Another important scenario, was the illegal, cruel, and knowingly conscious suspension of Litigant's Driver's License, without cause, nor reasons, on November October 29, 2019, effective November 11, 2019. Doc. 27-1. p. 63. Litigant was not able to drive to work, execute chores, using personal transportation, was unable to conveniently transport a sick relative, taken care of, by the Litigant, denied socialization, via use of personal Motor Vehicle, neither to use ease of access, in visiting family, far away, etc. Other related extensive Records (in Case File). Petitioner-Appellant wrote, Emailed, visited, telephoned City of New York. This too, had formal apologies, from the City of New York, being evident, and shown (Records), City of New York even correcting matter on July 16, 2020, retroactive to one (1) year, prior, to July 16, 2019. Started (took effect) on August 1, 2020. Records. Doc. 27-1, pgs. 64-65. Reasons eventually, July 2020? Allegedly No Insurance, after Motor Vehicle was towed, which is totally untrue. Timings. Department of Motor Vehicles, on August 1, 2020, corrected, and then stamped "Re-Instatement – Insurance Proof Received", end of quote. Records. City of New York, the Causative Agents (Vicarious Liability/Vicarious Responsibility) of such adverse actions, against the Petitioner-Appellant.

Prevalent throughout, towards this Petitioner-Appellant, by the City of New York, are "policy", "custom", "practice", having to do with the same targeted person, by illicit means.

and proven retaliatory, and Harassing means. Hence, Monell Claims (1978), superceded by Pembaur (1986), and, Los Angeles vs. Humphries (2010). Afterwards, the matter of Thompson vs. Clark (2022), cannot be ruled out, neither over looked. Aspects of McConnell Douglas case (also precedence) critical. Precedence should not be overlooked, and in particular, against Pro-Se Litigant. Existing too, are 42 U.S.C. s/s 1983, Malicious Prosecution, Unlawful Detention/False Imprisonment, along with Discriminatory Animus, Property Rights, and Proprietary Rights, Colour of State, and, Mental Anguish, also play pivotal roles, and which are also in Statutes/Laws, Case Laws, and Court Practices. Applicable, as per the individual circumstances, direct applications, and supported by Case Laws, and facts. Records. Therefore, Petitioner-Appellant requested Review of the Lower Court's Final Order, which is dated September 23, 2024. Doc. 176.

Returning to the Second Circuit Court's Order, dated July 10, 2026. Page 3. Petitioner-Appellant is respectfully of the view (no discord meant), that the Second Circuit Court had not used its power, authority, and discretion, in the matter. Errors of Laws, applicability, Case Laws, and Courts Practices, are clear, even according to this Court's own, along with that of the higher Supreme Court of the United States, and, not excluding at the Lower Court levels. Without question. Purpose of the Petitioner-Appellants is to highlight, and revisit clear Principles, facts, sequences, nexus, Timings. Somehow, the Benefits of All Possible Doubt, not afforded to this Petitioner-Appellant, thwarting justice. It would appear, that, somewhere, it appear to indicate that Pro-Se Litigant is not being afforded the courtesies of Due Process. The Claims outlined, are not uncommon, even from a Pro-Se, are etched in Laws, not being challenged, admissions or volitions by the Respondents, Statutes of Limitations Breaches, inter alia. Appropriate, and reasonably timely filings, by the Petitioner-Appellant, throughout, unlike the Respondents. Stark contrasts, and, appear that any adverse Decisions otherwise, in view of the Litigant, is most unusual, and does not address the facts, and presentations, even against the Second Circuit-Courts' own standards.

Petitioner-Appellant notes the Court's five (5) factors presented. Page 3, of its July 10, 2026 Order. It would have appeared that nothing that the Litigant have presented, is being analysed, even when the Respondents, are not protesting, and cannot disclaim, otherwise. Compelling. Petitioner-Appellant, is the Party being Prejudiced, and the Respondents cannot deny the facts of the Exhibits, Laws/Statutes, Case Laws, neither Court Practices. Court normally are cognizant of "Game of Skill" used against Pro-Se Parties, where huge Corporations are concerned, such entities at times, usurping authority, and prioritising their own brands of retaliations, over Rights of the Individual (Constitution). Justice must be innate, non-excludable, non-rivalrous – a Public Good. No Defenses by the Respondents can stand up to any Legal Standards. None. However, the Petitioner-Appellant, as Pro-Se, has no power, no authority, and hardly any resources, and so, the Respondents will continue to negatively impact the Litigant, and has been doing so, in many ways. Facts. Other Prejudices may be at play, something that the Petitioner-Appellant certainly has no control over.

Conveniently, all matters being presented by the Respondents, appear to be favoured by the Lower Court, even though, the Respondents, are not, in Law, Defending the Claim.

Irrefutable and unmistakable evidences, by the Petitioner-Appellant, whom, by all means, is simply "not reduced", not insulted, not dehumanised, has retained decorum, meaning, purpose, and dignity, despite. Again, the Records being requested by the Respondents, including the Individuals, as public servants, do not equate, neither rise to the matters at hand. Never. Stated by the Lower Court itself, November 1, 2023, but later reneged, in mid 2024. Records, and which are easy to Review, as, they are available. Besides, the Respondents have already outlined, that, they can "give the information, to anyone, at any time, for any reasons, without Litigant's consent, knowledge, or participation". Directly, that they are "not bounded, by any boundaries, nor Agreements, neither Laws" (end of quote), in how Respondents will handle Litigant's Personal Data, and Privacy Data. Respondents' March 15, 2024 document, as doc. 148. Pgs. 1-2, though not limited to here, as similar requests, made by them, on November 1, 2023, in Open Court, which the SDNY correctly "struck down". "Over reach". This simply should not have existed, neither be permitted to happen.

These Personal Data, and Privacy Data, include, but not limited to, Litigant's: all Tax Returns, all Unemployment Records (if any), Social Security Number, all Employment History, all Medical Records, all Insurance Records, inter alia. Unbelievable. What about the Petitioner's-Appellant's direct, case related, reasonable, repeated requests for documents, relevant to the case, and are not folly, neither frivolous? How do these request connect to the individual, itemised issues, brought forth, by the Petitioner-Appellant, in the composite Lawsuit? At some point, Petitioner-Appellant thought that DNA requests, paternity testing, Dental Records, Bank Balances, Identifications, height, weight, Blood Type, intimate relationships, number of children, number of spouses, would have been requested, by the Respondents. List goes on – religious affinity, type of car driven, or preferred.....

In view of the Petitioner-Appellant, prevalent are unprecedented requests amounting to ridiculous developments, from the Respondents, for Litigant having filed for Civil Rights violations. Instead of looking at the Evidences (Exhibits, by Litigant), sequence, nexus, Timings, facts, the Breaches, to include Statutes of Limitations, Non-Responding Respondents, are embarking on time wasting, and "showing power". Even though indisputable information, etc. have been presented by the Petitioner-Appellant. Frivolous requests, by the Oppositions, in developments at hand, never seen, heard of, in no Records anywhere, for a Civil Lawsuit filed, under any circumstances, against a Party, and, to be given, at will, to Corporations, and Individual Respondents, and for public viewing. Attempts at doxxing. View of the Petitioner-Appellant. More than completely absurd, from the Respondents. Petitioner-Appellant is relying on this the Supreme Court of the United States, to right these wrongs, to charter the path of revisiting the issues, and assess, in sequence, each matter, relevant to this case, as per the Litigant. Indeed, it is the Respondents whom failed to comply with Discovery. Clear. No Orders, no beckoning, no authority invoked, by the Lower Court, and which, would have been reasonable, in Law, and would have been devoid of Prejudice, once done (by the Lower Court).

Petitioner-Appellant make reference to the Second Circuit Court's page 4, final paragraph, in the said recent Order, on its five (5) points opined. Points outlined are noted, but the Pro-Se Litigant's case should not have been "Dismissed, in the interests of clearing Court

calendar"; has to be something else. Unheard of, unreasonable, and for the reasons, stated throughout, by the Petitioner-Appellant, though not limited to these points, by the Litigant. Irrespective, Petitioner's-Appellant's denial of the reasonable requests, are within rights. As at the material time, compared to any other reasonable person, in similar circumstances, Litigant did not refuse to affix their signature. The caveats attached to the requests, caused the Petitioner-Appellant not to grant permission, to an action, he deemed not legal (Respondents' requests), to the case. Still, whilst the Respondents, throughout, have not complied with normal, required, and compulsory document requests, by all standards, by the Litigant. Records, such as (written) Motions, Open Court Arguments, inter alia. This should not preclude the facts, as presented by the Litigant, and should not be barred from proper Trial, including Jury Trial, or, Damages made, to the Petitioner-Appellant, via Summary Judgement(s), as being most appropriate.

In view of this Litigant, the Appellate Court, Second Circuit, do have the authority to Review any Lower Court's actions, at all times. Entrenched, as, have Jurisdiction, over District Court's (Federal Courts) matters. Mistakes by Lower Courts, under Rule 60 (b), are not uncommon, and more frequent, that are perceived. Mistakes can simply be happening, due to misapplication, misinterpretations, misrepresentations, over looking critical issues, not delving (more) into proven, properly obtained, crucial information. Jury Trial could also have been ideal, but, never granted to Petitioner-Appellant, in this, nor any other Civil matters, filed by him.

CONCLUSION

"Without Prejudice", the case, as presented by the Petitioner-Appellant, is of relevance to the public, particularly realising the rampant unfair, proven situations, in the case at hand, cited by the Petitioner-Appellant. Thus, the Review request, via this initial request, of an Extension Of Time, of Sixty (60) Days, beyond the Due Date. Petitioner-Appellant has several other cases, being worked on, by him, by the Second Circuit, the SDNY, etc., still involving the City of New York. Follow Ups, possibly more Briefs, inter alia.

Dated: September 21, 2026 (originally).
Nassau County, N.Y.


ALROY RICHARDS
Petitioner-Appellant
Pro-Se

COPY: ALL Respondents, c/o City of New York
Corporation Counsel
NYC Law Department
100 Church Street
New York, N.Y. 10007

ATTN: Ms. JANET L. ZALEON, *Assistant Corporation Counsel*
Email: jzaleon@law.nyc.gov, and, ServiceECF@law.nyc.gov

[Handwritten signature]
09/24/2026

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

EXH. A

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 4th day of September, two thousand twenty-six.

Alroy D. Richards,

Plaintiff - Appellant,

v.

City of New York, Mark Levine, in his official capacity,
as city of New York Comptroller, John Pastoriza, D.
Saroff,

Defendants - Appellees.

ORDER

Docket No: 26-2634

Appellant, Alroy D. Richards, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

Catherine O'Hagan Wolfe



Received 09/11/2026
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EXH. B
Received on
07/12/2026
[Signature]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

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 10th day of July, two thousand twenty-six.

PRESENT: RAYMOND J. LOHIER, JR.,
Chief Judge,
BARRINGTON D. PARKER,
DENNY CHIN,
Circuit Judges.

ALROY D. RICHARDS,

Plaintiff-Appellant,

v.

No. 24-2634-cv

CITY OF NEW YORK, MARK
LEVINE, IN HIS OFFICIAL
CAPACITY AS CITY OF NEW
YORK COMPTROLLER, JOHN
PASTORIZA, D. SAROFF,

*Defendants-Appellees.**

* The Clerk of Court is respectfully directed to amend the caption as set forth above.

FOR PLAINTIFF-APPELLANT:

ALROY D. RICHARDS, *pro se*, Valley Stream, NY

FOR DEFENDANTS-APPELLEES:

Janet L. Zaleon, Assistant Corporation Counsel (Deborah A. Brenner, of Counsel, *on the brief*), for Muriel Goode-Trufant, Corporation Counsel of the City of New York, New York, NY

Appeal from a judgment of the United States District Court for the Southern District of New York (Ronnie Abrams, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court is AFFIRMED and the remainder of the appeal is DISMISSED.

Plaintiff Alroy D. Richards, representing himself, appeals from the judgment of the United States District Court for the Southern District of New York (Abrams, *J.*) adopting in full the report and recommendation of the Magistrate Judge (Willis, *M.J.*) and dismissing his action for failure to prosecute and failure to comply with discovery orders under Federal Rules of Civil Procedure 41(b) and 37(b), respectively.¹ Richards also seeks to appeal an

¹ The District Court did not enter final judgment in a separate document as required by Rule 58 of the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 58(a). But “failure to set forth a judgment or order on a separate document when required by [Rule] 58(a)

interlocutory order granting Defendants' motion to dismiss all claims except his Fourth Amendment claim against Defendant D. Saroff. We assume the parties' familiarity with the underlying facts and the record of prior proceedings, to which we refer only as necessary to explain our decision to affirm in part and dismiss in part.

In reviewing a district court's dismissal of an action under Rules 41(b) and 37(b), we broadly consider whether the court abused its discretion by making an error of law or a clear factual error. *See Park v. Kim*, 91 F.4th 610, 612 (2d Cir. 2024). In reviewing a claim of error under Rule 41(b), we consider five factors:

whether[] (1) the plaintiff's failure to prosecute caused a delay of significant duration; (2) plaintiff was given notice that further delay would result in dismissal; (3) defendant was likely to be prejudiced by further delay; (4) the need to alleviate court calendar congestion was carefully balanced against plaintiff's right to an opportunity for a day in court; and (5) the trial court adequately assessed the efficacy of lesser sanctions.

United States ex rel. Drake v. Norden Sys., Inc., 375 F.3d 248, 254 (2d Cir. 2004). A district court does not need to discuss each factor on the record. *See Shannon v. Gen. Elec. Co.*, 186 F.3d 186, 194 (2d Cir. 1999).

does not affect the validity of an appeal from that judgment or order." Fed. R. App. P. 4(a)(7)(B). Under Rule 58(c)(2)(B), the judgment became final on February 20, 2025, 150 days after the order was entered on the docket. *See* Fed. R. Civ. P. 58(c)(2)(B).

Likewise, “several factors may be useful in evaluating a district court’s exercise of discretion to dismiss an action under Rule 37,” including “(1) the willfulness of the non-compliant party or the reason for noncompliance; (2) the efficacy of lesser sanctions; (3) the duration of the period of noncompliance, and (4) whether the non-compliant party had been warned of the consequences of noncompliance.” *Aguiwal v. Mid Island Mortg. Corp.*, 555 F.3d 298, 302 (2d Cir. 2009) (citation modified).

With these non-exclusive factors in mind, we conclude that the District Court acted within its discretion to dismiss Richards’s action pursuant to Rules 41(b) and 37(b) given the following record: (1) Richards failed to comply with discovery orders, resulting in a 10-month delay; (2) Richards received notice that failure to comply could result in dismissal; (3) the District Court concluded that further delay would prejudice Defendants’ ability to litigate this action; (4) the Magistrate Judge balanced the need to alleviate “court calendar congestion” against Richards’s right to be heard; (5) the District Court considered, but rejected, lesser sanctions; and (6) Richards stated he would “never” comply with the discovery orders. Dist. Ct. Dkt. No. 176 at 5–6 (citation modified).

Lastly, Richards also challenges the District Court's partial grant of the Defendants' motion to dismiss, which is an interlocutory order. With exceptions not applicable here, "interlocutory orders do not properly merge with a final judgment dismissing an action for failure to prosecute," *Shannon*, 186 F.3d at 192, or for "noncompliance with discovery orders," *Marquez v. Silver*, 96 F.4th 579, 583 (2d Cir. 2024). "We have explained that if a litigant could refuse to proceed whenever a trial judge ruled against him, wait for the court to enter a dismissal for failure to prosecute, and then obtain review of the judge's interlocutory decision, the policy against piecemeal litigation and review would be severely weakened." *Id.* (citation modified). We therefore lack jurisdiction to consider Richards's appeal insofar as it challenges the District Court's interlocutory order. *See id.* "Although we lack appellate jurisdiction to review the [District Court's] interlocutory order[] at this stage," Richards "may seek appellate review" of the order "if and when the District Court enters an eventual final judgment on the merits." *Id.* at 584 (citation modified).

CONCLUSION

We have considered Richards's remaining arguments and conclude that they are without merit. For the foregoing reasons, the judgment of the District Court is AFFIRMED and the remainder of the appeal challenging the District Court's partial grant of the Defendants' motion to dismiss is DISMISSED without prejudice for lack of appellate jurisdiction.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

Received 07/12/2026
