IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

TERRY PETTEWAY, THE HONORABLE DERRECK ROSE, MICHAEL MONTEZ, SONNY JAMES and PENNY POPE, *Plaintiffs*, v. GALVESTON COUNTY, TEXAS, and HONORABLE MARK HENRY, in his official capacity as Galveston County Judge, *Defendants.*	§	Civil Action No. 3:22-cv-57
UNITED STATES OF AMERICA, *Plaintiff*, v. GALVESTON COUNTY, TEXAS, GALVESTON COUNTY COMMISSIONERS COURT, and HONORABLE MARK HENRY, in his official capacity as Galveston County Judge, *Defendants.*	§	Civil Action No. 3:22-cv-93
DICKINSON BAY AREA BRANCH NAACP, GALVESTON BRANCH NAACP, MAINLAND BRANCH NAACP, GALVESTON LULAC COUNCIL 151, EDNA COURVILLE, JOE A. COMPIAN, and LEON PHILLIPS,	§	Civil Action No. 3:22-cv-117

Plaintiffs,	§
	§
v.	§
	§
GALVESTON COUNTY, TEXAS, HONORABLE MARK HENRY, in his official capacity as Galveston County Judge, and DWIGHT D. SULLIVAN, in his official capacity as Galveston County Clerk	§
Defendants.	§

UNITED STATES' RESPONSE IN OPPOSITION TO DEFENDANTS' RENEWED MOTION TO STAY

INTRODUCTION

The United States alleges that the 2021 redistricting of the Galveston County Commissioners Court violates Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, because it was adopted, at least in part, for a discriminatory purpose, and would result in Black and Hispanic citizens having less opportunity to participate in the political process and elect candidates of their choice.

On May 24, 2022, this Court denied Defendants' motion to stay[1] pending resolution of *Merrill v. Milligan*, No. 21-1086, 142 S. Ct. 1358 (2022). ECF No. 28. Defendants return to this Court seeking identical relief, now based on a stay issued by a single district court in Louisiana. *Nairne v. Ardoin*, No. 3:22-cv-178-SDD-SDJ, ECF No.

[1] As Defendants have incorporated by reference their first motion to stay, ECF No. 27, which this Court denied before Plaintiffs responded, ECF No. 28, the United States also addresses arguments contained in that motion. ECF No. 77 at 2 n.1.

79 (M.D. La. Aug. 30, 2022). That court characterized the Supreme Court's stay in *Ardoin v. Robinson*, 142 S. Ct. 2892 (2022), as having changed the "lay of the land" of Section 2 litigation. ECF No. 77 at 2, 3. Such is not the case. Not only have courts across the country proceeded with Section 2 cases, but many have ordered relief since the Supreme Court entered a stay in *Ardoin*, which was the basis of the order in *Nairne*. *See infra* at 4-5 (listing recent unstayed Section 2 cases).

Defendants' motion reprises its urging that this Court's speculate about the impact, if any, an opinion in *Merrill*[2] could have, a course of action this Court explicitly declined to follow in May. ECF No. 28 at 1-2. Defendants also ignore how a requested delay until 2023 will exacerbate the concerns this Court has already recognized about its ability to provide appropriate relief for the 2024 commissioners court election. *Id*. at 3. Because Defendants fail to carry their required heavy burden justifying a discretionary stay, and little has changed since this Court denied their initial request, it should deny their second motion to stay.

PROCEDURAL BACKGROUND

On March 24, 2022, the United States filed its complaint alleging Galveston County's 2021 commissioners court plan was adopted, in part, for a discriminatory purpose and had the result of violating Section 2 of the Voting Rights Act, 52 U.S.C. § 10301. ECF No. 30 ¶¶ 122-121. The United States filed suit here more than six weeks

[2] As this Court is aware, two separate challenges to Alabama's congressional map were consolidated for purposes of preliminary injunction proceedings before the three-judge court—*Singleton v. Merrill*, No. 21-cv-1291 and *Milligan v. Merrill*, No. 2:21-cv-1530. The Supreme Court heard oral argument on October 4, 2022.

after the Supreme Court acted in *Merrill* by taking the case and staying the preliminary injunction that the district court had ordered.

Roughly two months after the United States filed suit, on May 17, Defendants moved to stay this case. ECF No. 27. This Court denied the motion one week later, reasoning that the motion was speculative as to what the ultimate holding in *Merrill* might be and that the balance of the equities "weigh[ed] against staying the case." ECF No. 28 at 2. Now, one month after a district court in Louisiana stayed a different redistricting case, Defendants again seek a long pause in this case. ECF No. 77 at 7.

LEGAL STANDARD

A party seeking to stay a case "bears a heavy burden to show why a stay should be granted absent statutory authorization." *Coastal (Bermuda) Ltd. v. E.W. Saybolt & Co., Inc.*, 761 F.2d 198, 203 n.6 (5th Cir. 1985). Although this Court has "broad discretion to stay proceedings as an incident to its power to control its own docket," *Clinton v. Jones*, 520 U.S. 681, 706 (1997), this authority "is not unbounded. Proper use of this authority 'calls for the exercise of judgment, which must weigh competing interests and maintain an even balance,'" *Wedgeworth v. Fibrebroad Corp.*, 706 F.2d 541, 545 (5th Cir. 1983) (quoting *Landis v. North American Co.*, 299 U.S. 248, 254-55 (1936)). Courts consider: "(1) the potential for hardship and inequity imposed on the parties by proceeding with the action, (2) whether prejudice will result if a stay is imposed, and (3) the interests of judicial economy." ECF No. 28 at 2 (citations omitted). "Where a discretionary stay is proposed, something close to genuine necessity should be the mother of its invocation." *Coastal*, 761 F.2d at 203 n.6.

ARGUMENT

I. A grant of certiorari in another case should not pause all redistricting cases for months.

Defendants' renewed motion suggests that federal courts nationwide should refrain from addressing any challenge, whether statutory or constitutional, to all redistricting plans until the Supreme Court renders an opinion in a Section 2 case by the end of its current term (likely in the summer of 2023). ECF No. 77 at 3-6. "[O]nly in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both." *Landis*, 299 U.S. at 255.

Defendants' extraordinary theory would pause for the better part of a year most enforcement the right to be free from vote dilution protected by the Voting Rights Act as well as the Fourteenth and Fifteenth Amendments. If Defendants are correct (which they are not), then all redistricting cases in trial courts across the country would be stayed. The facts show otherwise. In a challenge to Texas's statewide redistricting plans, a federal court denied a stay motion filed by the State after the Supreme Court entered the stay in *Merrill*. *LULAC v. Abbott*, No. 3:21-cv-259, ECF No. 246 (W.D. Tex. Apr. 22, 2022). Even more, cases alleging Section 2 violations have been proceeding across the country since *Robinson* was stayed and held in abeyance in June 2022.[3] Notably, even

[3] *Dixon v. Lewisville Indep. Sch. Dist.*, No. 4:22-cv-304, 2022 WL 4477320 (E.D. Tex. Sept. 26, 2022) (school district's at-large method of election); *Lower Brule Sioux Tribe v. Lyman Cnty.*, No. 3:22-cv-03008-RAL, 2022 WL 4008768 (D.S.D. Sept. 2, 2022) (county commissioner redistricting); *see also Lower Brule Sioux Tribe v. Lyman Cnty.*,

after the Supreme Court stayed *Robinson*, it vacated an appellate court's stay of a permanent injunction in another case, thereby allowing a remedial plan to proceed following a successful Section 2 challenge to the at-large method of electing members of the Georgia's statewide Public Service Commission. *Rose v. Raffensperger*, No. 22A136, 2022 WL 3568483 (U.S. Aug. 19, 2022). Courts have been moving ahead to conduct litigation and to decide Section 2 cases under the standards first enunciated in *Thornburg v. Gingles*, 478 U.S. 30 (1986), even after the Supreme Court took the *Merrill* case and granted a stay in February 2022.[4] This steady procession of cases and decisions clearly does not represent a disruption in the "lay of the land" of Section 2 litigation. ECF No. 77 at 2, 3.

Defendants' reliance on the district court's order in *Nairne* is misplaced, both factually and procedurally. As a threshold matter, "[a] decision of a federal district court judge is not binding precedent [on] . . . a different judicial district." *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) (citation omitted). *Nairne* challenged the State of Louisiana's legislative redistricting and *Robinson* challenged its congressional

No. 3:22-cv-03008-RAL, 2022 WL 3274236 (D.S.D. Aug. 11, 2022), *appeal filed*, No. 22-2748 (8th Cir. Aug. 18, 2022) (same).

[4] *See, e.g.*, *Rose v. Raffensperger*, 1:20-cv-02921-SDG, 2022 WL 3135915 (N.D. Ga. Aug. 5, 2022), *stayed,* No. 22-12593, 2022 WL 3572823 (11th Cir. Aug. 12, 2022), *stay vacated,* No. 22A136, 2022 WL 3568483 (U.S. Aug. 19, 2022) (method of election for Georgia Public Service Commission); *Alpha Phi Alpha Fraternity, Inc. v. Raffensperger*, 587 F.Supp.3d 1222 (N.D. Ga. 2022) (Georgia's congressional redistricting); *Bowman v. Chambers*, 586 F.Supp.3d 926, 936-37 (E.D. Mo. 2022) (St. Louis City Council redistricting); *Baltimore Cnty. Branch of Nat'l Ass'n for the Advancement of Colored People v. Baltimore Cnty., Md.*, No. 21-cv-03232-LKG, 2022 WL 657562 (D. Md. Feb. 22, 2022), *order modified*, 2022 WL 888419 (D. Md. Mar. 25, 2022) (Baltimore County redistricting).

redistricting. Because both raised similar claims in the same jurisdiction with certain identical facts, such as demographics and related data, they were assigned to the same district court as related cases. 3:22-cv-178-SDD-SDJ, ECF No. 23. Related cases involve "similarity in claims, common issues of fact, whether the same parties are involved, and the court's interest in judicial economy." *Valentine v. Collier*, No. 4:20-cv-1115, 2020 WL 1685122 at *1 (S.D. Tex. Apr. 6, 2020). The *Nairne* stay prevents a decision in *Merrill* from possibly affecting an ongoing or imminent trial in one, but not both, Louisiana statewide cases because the plaintiffs in *Nairne* sought a resolution by early 2023. 3:22-cv-178-SDD-SDJ, ECF No. 46. No such close procedural intertwinement exists between this case and any before the Supreme Court.

Finally, the only issue pending before the Supreme Court in in *Merrill* is the appropriate analytical approach for resolving a discriminatory results claim under Section 2. Here, however, both the United States and Consolidated Plaintiffs raise a discriminatory intent claim, ECF No. 30 ¶ 121; ECF No. 42 ¶¶ 183-84. As explained more fully below a stay of the United States' intentional discrimination claim is particularly inappropriate. *See infra* 13-14.

Even outside the normally time-sensitive nature of redistricting cases, courts regularly deny stay motions that rely on other cases' resolutions. For example, in affirming a district court's denial of a motion to stay an execution in light of a certiorari grant, the Fifth Circuit acknowledged "we are bound by our precedent even after the Supreme Court grants certiorari in another case on the relevant issue." *Kelly v.*

Quarterman, 296 F. App'x 381, 382 (5th Cir. 2008) (citing *United States v. Lopez-Velasquez*, 526 F.3d 804, 808 n.1 (5th Cir. 2008) (per curiam)).[5]

Defendants incorporate by reference several out-of-circuit cases from their first stay motion, but their reliance on them is misplaced. ECF No. 27 at 5 (citing *Tel. Sci. Corp. v. Asset Recovery Sols., LLC*, No. 15 C 5182, 2016 WL 47916 (N.D. Ill. Jan. 5, 2016) and *Kamal v. J. Crew Grp., Inc.*, No. 15-0190 (WJM), 2015 WL 9480017 (D.N.J. Dec. 29, 2015)); *see also id*. at 7 (citing *Miccosukee Tribe of Indians of Fla. v. S. Fla. Water Mgmt. Dist.*, 559 F.3d 1191, 1198 (11th Cir. 2009)). In *Miccosukee*, while the Eleventh Circuit in dicta approved of the district court's stay pending another Eleventh Circuit decision, the two cases "share the same plaintiffs . . . and they both present[ed]" an issue about the same type of water pumps, but just at different locations. *Miccosukee*, 559 F.3d at 1193. In other words, "[t]he two cases have a lot in common." *Id*. In contrast, the parties and facts here and in *Merrill* are separate and distinct.

[5] *See also Hooks v. Landmark Indus., Inc.*, 797 F.3d 309, 313 n.6 (5th Cir. 2015) (declining to stay proceedings "due to uncertainty of timing and nature of resolution" even after Supreme Court granted certiorari "to resolve the issue presented in this case"); *Ellis v. Collins*, 956 F.2d 76, 79 (5th Cir. 1992) ("The Supreme Court's recent grant of certiorari . . . does not alter" existing federal habeas law); *Ali v. Quarterman*, 607 F.3d 1046, 1049 (5th Cir. 2010) (holding lower court abused its discretion by staying case because of pending district court case on similar issue); *Bar Group, LLC v. Bus. Intelligence Advisors, Inc*., 215 F. Supp. 3d 524, 544-45 (S.D. Tex. 2017) (denying defendant's motion to stay in light of parallel state court suit on similar issue); *Patent Compliance Grp., Inc. v. Interdesign, Inc.*, No. 3:10-CV-0404-P, 2010 WL 11537430, at *7-8 (N.D. Tex. June 28, 2010) (holding that "the benefit of a stay [pending an appellate opinion] to clear up potential ambiguity does not counter the parties' right to a fair trial on the merits when the law is sufficiently in place for adjudication").

The district court orders cited by Defendants in their first stay motion that this Court found unpersuasive and which are incorporated by reference in their renewed motion remain unhelpful to them.[6] Those courts stayed their proceedings because of a critical threshold issue before the Supreme Court there: plaintiffs' standing. If the Court resolved the case one way, "Plaintiff will have no standing to proceed with the current case." *Kamal*, 2015 WL 9480017, at *1. A stay was perhaps sensible there if the Supreme Court "ultimately rule[d] that Plaintiff in this case lacks standing" because the case could not proceed. *Id*. at *2. After all, "[t]here is no case or controversy without standing to sue." *Williams v. Parker*, 843 F.3d 617, 620 (5th Cir. 2016). Standing is not at issue in *Merrill*. Even if it were, the United States' standing is not at issue since the United States is statutorily authorized to enforce Section 2. 52 U.S.C. §§ 10301, 10308(d).

Even less persuasive is Defendants' reliance on a district court's stay issued while a petition for a writ of certiorari was pending. ECF No. 27 at 2 n.1. There, the petition's resolution before the Court was imminent; the petition's briefing was complete when the district court issued the stay on February 14, 2020. *Treece v. Perrier Condo. Owners Ass'n*, 2020 U.S. Dist. LEXIS 26515, at *38-39 (E.D. La. Feb. 14, 2020). According to Supreme Court guidance, ripe petitions for writs of certiorari are ready for the justices' consideration in mere weeks. *See* Mem. Concerning the Deadlines for Cert Stage

[6] This Court recognized how this authority was unpersuasive because "in none of those cases did the trial court stay its own case simply because a higher court *may* substantially change its own precedent." ECF No. 28 at 1-2 (emphasis in original).

Pleadings and the Scheduling of Cases for Conference at 3-4 (Feb. 2020), *available at* https://www.supremecourt.gov/casehand/Guidance-on-Scheduling-Feb-2020.pdf. And, indeed, the Court denied the petition for a writ of certiorari on March 23, 2020, and the district court lifted the stay that day; the stay lasted just five weeks. *Treece v. Perrier Condo. Owners Ass'n, Inc.*, 519 F. Supp. 3d 342, 346 (E.D. La. 2021). Here, Defendants' stay motion will last for many months and will cause serious prejudice to the United States. *Infra* at 10-12.

II. Defendants do not carry their heavy burden of demonstrating any hardship or prejudice warranting a months-long stay.

Defendants do not show "something close to genuine necessity" warranting a stay here. *Coastal*, 761 F.2d at 203 n.6. As they have conceded previously, a motion to stay is a "fact-sensitive question," ECF No. 27 at 2 (citation omitted), Defendants continue to fail to identify any fact establishing hardship or prejudice that comes close to carrying their "heavy burden," *Coastal*, 761 F.2d at 203 n.6. Instead, they offer a parade of speculation, conjecture, and predictions. Among them are: "continuing discovery under a standard likely to be changed in June 2023 makes little sense," ECF No. 77 at 4; Defendants "anticipate" that the Supreme Court's yet-to-be-written order will affect other claims in this case, *id*. at 5; *Merrill* "could very well be outcome determinative," ECF No. 27 at 2; "litigants could be placed in a position to entirely relitigate this case," *id*. at 4; "[t]he issues before the Supreme Court in *Merrill* could be dispositive of this litigation," *id*. at 9; "the Supreme Court's disposition of that case will be informative to

the Parties' claims and defenses," *id*.; "an endeavor which will in all likelihood prove fruitless," *id*. None of Defendants' assertions carries their burden here.

"A court should not decide a motion to stay based on a party's speculative concerns." *Sierra Club v. Fed. Emergency Mgmt. Agency*, H-07-0608, 2008 WL 2414333, at *7 (S.D. Tex. June 11, 2008) (citations omitted). This Court honored that caution when it declined the invitation "to speculate that the Supreme Court will alter" the applicable legal standard. ECF No. 28 at 1. Defendants' crystal-ball gazing is even less persuasive when one of the justices concurring in the Court's stay of *Merrill* explained the order "does not make or signal any change to voting rights law." *Merrill*, 142 S. Ct. at 879 (Kavanaugh, J., concurring).

Defendants' burden here is heavy and it is to establish "why a stay should be granted." *Coastal*, 761 F.2d at 203 n.6. And merely predicting the outcome in another case based on their own litigation interests is not the same as "mak[ing] out a clear case of hardship" warranting a stay. *Landis*, 299 U.S. at 255. For this reason alone, the motion must be denied.

III. The United States faces significant prejudice if this Court stays this case.

Voters will select candidates for Galveston County's commissioners court precincts in the March 5, 2024, primary election. Candidates must file for the primary election no later than December 11, 2023.[7] As a result, an effective remedy must ensure

[7] Tex. Sec'y of State, *Important Election Dates 2022 –2024*, *available at* https://www.sos.state.tx.us/elections/voter/important-election-dates.shtml#2024.

a redistricting plan that complies with federal law is in place by the end of the qualification period.

This Court has consistently recognized the importance of being able to grant any appropriate relief in sufficient time to be implemented in the 2024 elections for the commissioners court. The draft Docket Control Order provided to the parties prior to the July 13, 2022, initial scheduling conference set the docket call for September 8, 2023, with trial to be held within 60 days of that date. Attachment 1 is a copy of the draft order. After hearing from counsel at the conference as to the need for an earlier trial window to ensure, if necessary, adequate time to implement a remedy, the final Docket Control Order reflects a June 9, 2023, docket call date, where it remains today. ECF No. 66 at 2. This Court reaffirmed its view of the necessity for an early date, and recognized the importance of this timeline in denying Defendants' first motion to stay, stressing how a long delay "could impair this court's ability to issue effective relief." ECF No. 28 at 3.

Defendants seek to mitigate the dilatory effect of their request by claiming *Merrill* will "probably" be decided "by March 2023." Not surprisingly they offer no support (nor could they) for this prediction besides a vague invocation that "it is expected." ECF No. 27 at 8. But even under this timeline, the parties would have little more than three months to be ready for trial under a schedule this Court has already determined to be necessary to devise and implement a remedial redistricting plan.

Congress has charged the Attorney General with enforcing Section 2. 52 U.S.C. §§ 10301, 10308(d). If the United States cannot obtain relief for the residents of Galveston County because of the risks a stay presents, its interests will be prejudiced,

along with the interests of the voters in Galveston County. *Cf. Posada v. Lamb Cnty., Tex.*, 716 F.2d 1066, 1074 (5th Cir. 1983) ("Congress entrusted the Attorney General with an affirmative obligation to secure enforcement of the provisions of the Voting Rights Act . . . [who] bears the responsibility for vindicating the public interest under the Act").

Because of Defendants' inability to "make out a clear case of hardship or inequity in being required to go forward" and the "fair possibility that the stay . . . will work damage" to the United States' ability to enforce federal law in the public's interest, the motion should be denied. *Landis*, 299 U.S. at 255.

IV. A stay will not conserve judicial resources.

The present trial schedule provides a narrow, but adequate, window of time for discovery, trial, and, if necessary, implementation of a remedial redistricting plan that complies with federal law as well as avoiding any conflict with the cautions identified in *Purcell v. Arizona,* 549 U.S. 1 (2006). A stay that halts discovery and all subsequent events will not conserve judicial resources, because a delay in obtaining relief for Galveston County residents through a merits determination may require instead seeking preliminary relief in sufficient time for the 2024 election, with a likelihood of additional proceedings following elections. Further, Defendants' arguments that a stay will benefit the parties by allowing "non-hypothetical data" from the November 2022 general election misses the mark. ECF No. 77 at 6. Under the Docket Control Order, discovery is open until April 21, 2023; Plaintiffs' expert reports are not due until January 13, 2023. ECF

No. 66 at 1-2. There is no reason why data from the upcoming election cannot be considered under the current timeline.

V. The United States' discriminatory intent claim is not affected by the proceedings in *Merrill*.

Defendants' attempt to expand the scope of the issues before the Supreme Court review of *Merrill* to include Section 2 discriminatory intent claims is unavailing. In *Merrill*, the Supreme Court stayed preliminary injunctions issued by the United States District Court for the Northern District of Alabama in challenges brought by three sets of plaintiffs who challenged the post-2020 Census redistricting of the Alabama congressional plan. These preliminary injunctions did not address claims of a discriminatory intent under Section 2.

After a joint evidentiary hearing, a three-judge court hearing *Milligan v. Merrill*, No. 2:21-cv-1530, and *Singleton v. Merrill*, No. 21-cv-1291, granted a preliminary injunction finding the *Milligan* plaintiffs, under the analytical approach set forth in *Gingles*, were substantially likely to prevail on their claim that the plan violated Section 2's results standard. 582 F. Supp. 3d 924, 1026 (N.D. Ala. 2022). The three-judge court explicitly reserved ruling on those constitutional claims presented in *Milligan* and *Singleton* that required proof of discriminatory intent. *Id.* at 937. The single judge hearing *Caster v. Merrill* (who was part of the three-judge court) adopted the *Milligan* opinion and granted the same relief. 2:21-cv-1536, 2022 WL 264819, at *2 (N.D. Ala. Jan. 24, 2022). By reserving ruling on the constitutional claims, the resulting preliminary

injunctions were based solely on the evidence presented in the *Milligan* plaintiffs' Section 2 results claim. *Id.* at *5.

Resolution of a claim of intentional vote dilution, either constitutional or statutory, is guided by both *Rogers v. Lodge*, 458 U.S. 613, 623-27 (1982) and *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252, 266 (1977). In *Rogers,* the Court noted with approval the lower courts' conclusion that the "supporting proof . . . was sufficient to support an inference of intentional discrimination." *Rogers,* at 624. The Court proceeded to catalogue the supporting evidence, noting that it was "organized primarily around the factors which *Nevitt v. Sides* 571 F.2d 209 (5th Cir. 1978) had deemed relevant to the issue of intentional discrimination" and "were those primarily suggested in *Zimmer v. McKiethen,* 485 F.2d 1297 (5th Cir. 1973)." Those factors included a history of past discrimination in the electoral process, racially polarized voting, depressed socio-economic status of minority residents, and discrimination in other aspects of public life. *Rogers* at 624-26. The Court later held those factors also to be central in establishing a violation under the results standard embodied in the 1982 amendment to Section 2. *Gingles*, at 36-42. Thus, a ruling in *Merrill* should have little, if any, effect on the type and scope of evidence this Court will consider in addressing a claim of intentional discrimination, a claim that both the United States and the Consolidated Plaintiffs have alleged. For that reason, the parties, at a minimum, should be allowed to proceed with developing the evidence that would be considered in both an intent and a results claim under the Voting Rights Act.

There is every reason to believe that discovery should be allowed to move ahead, in order to afford the United States and the Consolidated Plaintiffs at least a chance to develop a record and seek relief in the 2024 elections. Defendants' requested stay would strongly risk denying the chance for relief in one of only two elections for Precinct 3 to be held under the 2021 redistricting plan in this decade. Even if the *Merrill* case leads to a change in the legal standard in some way in that is relevant to this case, the current schedule affords this Court and the parties the chance to respond to that before trial.

CONCLUSION

For the above reasons, the Defendants' renewed stay motion should be denied.

Date: October 21, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2022, I filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification to all counsel of record in this case.

/s/ *Catherine Meza*
CATHERINE MEZA